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A TREATISE

ON THE

FEDERAL INCOME TAX

UNDER THE ACT OF 1913

BY

ROGER FOSTER

op the new york bar,

Author op Commentaries on the Constitdtion of the CTnited States,

Treatises Upon Federal Practice, ^he Federal JnoiciARr Acts

OF 1875 AND 1887, Kemoval op Causes, the Federal Income

Tax op 1891, LiBEBTT op Contract, Attachment, &c.

SECOND EDITION

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PREFACE TO SECOND EDITION

The purpose of this work is to furnish a practical guide for the aid of lawyers, public officers, bankers, brokers, and other laymen in the United States, in the interpretation and administration of the statute imposing an income tax, and also to assist students of political science wherever situated, who are interested in the general subject of income taxation in the United States and Great Britain. The author hopes that it contains

all the available material that can be of use to them, including the previous statutes of the United States, analogous statutes in the several States and in Great Britain, the rulings of the Treasury Department under this and the former laws, and a complete digest of the decisions concerning income taxation in cases that have arisen in the United States and in England, Scotland, Ireland, and the British Colonies.

The pressure for a practical treatise upon the subject prepared by a lawyer in active practice, acquainted with the needs of his professional brethren, was so great that the first edition, was rushed through the press immediately after the publication of the forms needed for the returns due in March, 1914, and before the promulgation of the regulations by the Treasury Department. The generous reception by the profession, which put the book twice out of print during less than, a month after its publication, -seemed to justify the author's action. The time, however, thus allowed for preparation, was. inadequate.. The first edition contained many omissions. Subsequent rulings by the Commissioner of Internal Revenue, as well as the Regulations, have settled, so far as the administration of the statute is concerned, many questions which were then not discussed or discussed only tentatively. Many of the original forms, especially those connected with the deduction of the tax at the

source, have been changed and simplified. The entire book has consequently been rewritten by the author, who has added the new forms, the Regulations, and the substance of all new decisions by the courts and all new rulings by the Commissioner. He has also included additional historical material and extracts from the works of economists, as well as references to such authors. For the collection of much of this historical and economical material, he is indebted to Seligman's Income Tax, Smith's Federal Internal Tax History from 1861 to 1871, and arguments of Mr. William D. Guthrie, of the New York bar, before the Supreme Court of the United States in the Illinois Inheritance Tax Cases, reported as *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 42 L. ed. 1037, and before Governor Black, of New York, in opposition to the Dudley bill, imposing a graduated inheritance or transfer tax.

He has also added references to decisions of the Supreme Courts of Hawaii and of a number of British Colonies on income taxation and to a number of opinions of the courts and attorneys general under the Corporation Tax Act of 1909 and the present statute, together with the complete text of the Act of 5 & 6 Vict. c. 35, without which the full import of the British cases upon stoppage at the source cannot be appreciated.

In the preparation of the second as well as the first edition, he has used much of the material contained in a treatise on the Income Tax of 1894, which was the result of the joint labors of Mr. Everett V. Abbot, of the New York bar, and of himself. As regards the earlier American cases, he wishes to acknowledge his obligations to the notes on the Eevised Statutes by Messrs.

Gould and Tucker. In collecting the English authorities, he has been greatly aided by Dowell's Income Tax Laws, especially the seventh edition, by John Edwin Piper, Esq.

liberty Tower, New York, December 24th, 1914.

PREFACE TO FIRST EDITION.

The object of this work is to furnish a practical guide for the aid of lawyers, government officials and laymen, in the interpretation and administration of the new law imposing an income tax. The author hopes that it contains all the available material that can be of use to them, including the previous statutes in the United States, analogous statutes in the several States and in Great Britain, the rulings of the Treasury Department under this and the former laws, and a complete digest of the decisions concerning income taxation in cases that have arisen in the United States and in England, Scotland, Ireland, and the British Colonies. The pressure for an adequate treatise upon this subject has been so great that the author has considered that the profession would be better satisfied to receive this now than to await the time necessary for deliberation in order to answer the numerous disputed questions that have already been, or may hereafter be raised under the Act of 1913.

In the preparation of the book, he has used much of the material contained in a treatise on the Income Tax of 1894, which was the result of the joint labors of Mr. Everett V. Abbot, of the 'New York bar, and of himself. As regards the earlier American cases, he wishes to acknowledge his obligations to the notes on the Revised Statutes by Messrs. Gould and Tucker. In collecting the English authorities, he has been greatly aided by Dowell's Income Tax Laws, especially the Seventh Edition, by John Edwin Piper, Esq.

Liberty Tower, New York, December 16th, 1913.

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THE INCOME TAX OF 1913.

PART I.

COMMENTARIES ON THE STATUTE.

CHAPTEK I.

HISTORY OF THE INCOME TAX.

§ 1. Origin of the income tax. An epitaph and a picture in a tomb built near the end of the Eighteenth Dynasty show that a tax upon the incomes of public officers was in force in JEgypt in the fifteenth century before Christ.* Ancient history abounds in illustrations of taxes payable in kind proportioned upon the yearly produce of agriculture and the offspring of flocks and herds. The best known of these were the tithes levied upon the Hebrews for the benefit of the priesthood at least as early as the fifteenth century before our era ; ^ but they were imposed in other countries for religious as well as other purposes. Solon imposed a produce tax upon the Athenians, who, for that purpose, were classified in accordance with their

§ 1. 1 B. C. 1580 "It is he who the products of the different indus-
leVies all taxes on the income." tries payable in kind rather than

Breasted Ancient Records, II, par. to one upon the income of the same.
706, 716, V, p. 31. Mr. Kennan,

in his Income Taxation, p. 131, says, , . . ^ , , . , . .

"that Aristotle mentions a general . , , , . , . , . .

income tax upon all employments «';!^!>'! "- «pv«°--^P"''' . «X"-Ta,v, r,,
epy...^pc,,

levied by King Tachus in Egypt at -P« " ««- "!"^°"!"!"^"^^--

the suggestion of the Athenian exile

Chabrias (B. C. 360). The pas- Aristotle's Economics, Book II, ch.

sage, however, to which reference is XXVI.

made, seems to refer to a tax upon 8 Leviticus ch. xxvii, 30.

Foster Income Tax. - 1.

2 HISTOERY OF THE IITCOME TAX. [§ 1

wealth and their rates graduated accordingly.' A progressive income tax seems to have been imposed in Athens while Nausinies was archon in the year when Isocrates. delivered his Panegyric. *

During the middle ages, the general property tax, which usually prevailed throughout the different countries of Europe, was often supplemented by a faculty tax upon the profits of business, professional income and sometimes upon salaries. ^ Some of the mediaeval states also taxed the rents of lands.

In the Republic of Florence, when the profits by commerce-began to be conspicuous and consequently envied, an income-tax, termed the catasto, was imposed in 1427. In 1443 this-was made progTCSsive and was then known as the gracious tax,. dectna graziosa. The taxpayers were divided into fourteen classes and the rates varied from four to thirty-three and one-third per cent. In 1447 the rates were increased so as to run from eight to fifty per cent., and the poll tax that had accompanied it was dropped. It was then called the impopular tax,, decina dispiacenie. In 1480 followed the scala, a progressive-tax upon the income of immovable property, that is, from real estate alone. This, which was in the form of a forced loan, was praised by Machiavelli,* but was used by the Medici and after their expulsion by the republicans as a means of oppression and to confiscate the property of political opponents, thus causing the ruin of many. ''

In England, under William and Mary, immediately after the Revolution, a land tax was levied proportioned upon the rack rent or yearly value of land, at the rate of four shillings to the pound, accompanied by a tax at the same rate upon, salaries of public officers. ^ In France, during the eighteenth

3 B. C. 596 Montesquieu, De VEs- 7 G. Canestrini, La Scienza e prit des Lois, Book XIII, ch. VII. I'Arte di Stato, desunta dagli AtW See, also, Boeckh, Public Economy Officiali della Republica Fiorentina of the Athenians, Book IV, Ch. 5, e dei Medici. Ordinamenti Econo- pp. 639-665. (Am. Ed.) mici. - Della Finanza, Parte I, L'lm-

* Hildebrand's Jalirbiicher ffir Na- posta sulla Ricchezza Mobile e Im- tional Oelconomie und Statistik, mohile. Firenze, 1862; Seligman's- VIII, 453, Seligman's Progressive Progressive Taxation, 22, 23.

Taxation, 12. 8 4 William and Mary, c. 1 ; 9>

6 Seligman Income Tax, 41-43. and 10 William and Mary, c. 10.

6 History of Florence, Book IV,
Ch. 3. See 1Ud., Book VII, Ch. 308.

§ 2] IN EUROPE. 3

century, Louis XIV. enacted the dixieme, a general tax of ten per cent, upon all incomes.' This, which was at one time reduced to five per cent, then gradually enlarged to fifteen per cent, and accompanied by a progressive series of exemptions which made it almost a dead letter, continued until the French Revolution, when it was abolished. ^^ During the same century, Holland and Saxony established classified progressive income taxes, each of which lasted a short period of time.^^ During the French Revolution general income taxes were imposed in Paris, Rouen and Lyons. At Paris it was decreed that all incomes over fifty thousand livres should pay one hundred per cent., the tax taking the form of a forced loan. Subsequently, the Convention directed the levy throughout the nation of a forced loan of one thousand million livres, with an exemption; of a thousand livres for each member of the family, with certain exemptions for dependent children, and a progression from ten per cent, upon the first thousand livres to one hundred per cent, upon the surplus over nine thousand livres. This severity made its collection difficult and only about one-fifth of the sum demanded was realized. Similar forced loans based upon income were levied under the Directorate.'^^ Neither of these taxes had much duration or has been subsequently imitated. All modern income taxes are modeled, in part at least, upon those imposed in England during the wars with Napoleon.

§ 2. History of the income tax in Europe. In Europe the first approach to the income tax appears in some of the mediæval town taxes, where the earnings of artisans and tradesmen were taxed as evidence of their ability to pay proportionally with property and land-owners. Some of the mediæval states also taxed the rents of land, official salaries and profes-

9 A. D. 1710, 1715, 1742, 1745 and 1747. It va-

10 Houques-Fourcade, Les Impôts ried from one to two and one-half sur le Revenu en France au XVIII per cent. That of Saxony was es-Siecle. Histoire de la Dixieme et tabllshed in 1742 and lasted until de la Cinquantieme, Leur Applica- 1746. The rate varied from one to tiou dans la Généraliti de Guyenne. eight per cent. Seligman Progressive Paris, 1889. Seligman Income Tax- Taxation, 26.

ation, 51. 12 Seligman, Progressive Taxation,

11 That of Holland was imposed in 30-39.

sional gains.* These, however, except the tax on rents, which is called a land tax, are termed by the economists faculty taxes rather than income taxes. The first income tax which merits the definition of economists was the *caia*sto, imposed in Florence, which continued under the Medici. * This disappeared in the sixteenth century.' Under Louis XIV. in 1710, a *dixieme* was imposed in France. This was a tax of ten per cent, nominally imposed upon all incomes. It was reduced to a *vingtieme* or twentieth in 1749 and subsequently increased until the French Revolution, when it was abolished. * In England, anciently, land was taxed at a percentage of the income of its return and personal property at a percentage of its whole amount. Shortly after the English Revolution, holders of offices were required to pay a tax proportionate to their salaries. * The first general income tax in Europe was imposed by Pitt in 1799 during the Napoleonic wars.

§ 3. The income tax in Great Britain. On the failure of his "triple assessment" of the tax on expenditures, Pitt in 1799, introduced and passed an income tax. This required a general return of all incomes; exempted all that were less than £60 a year ; and imposed a graduated percentage upon the rest of one one hundred and twentieth part when it was between £60 and £105, with a rise in the scale up to a tax of ten per cent, on an income of £200 and upwards. * This rate of ten per cent., experience taught the English Exchequer to regard as "the natural limit of the tax." * There were further exemptions to householders with more than two children. Of these, householders with incomes between £60 and £400 had a reduction at the rate of four per cent, for each child ; those between £400 and £1,000 at three per cent. ; those between £1,000 and £5,000 at two per cent. ; and those who had £5,000 and upwards

^2. 1 General Property Tax, by dans la *Généralité* de Guyenne. Par-Prof. Edwin R. A. Seligman, 5 *Po- is* 1889. Seligman's Income Tax, 51. *litical Science Quarterly*, 24, 57. 8 Four shillings to the pound; 9

^ *Supra*, § 1. and 10 William and Mary, c. 10.

3 Seligman's Income Tax, 47. § 3. 1 39 Geo. 3, c. 13.

* *Hougues-Fourcade*, *Les Impots* 2 This term was given by Lord *sur le Revenu en France au XVIII* Henry Petty, Chancellor of Exche-
Sidle. *Histoire de la Dixieme et de quer*, *Dowell's Income Tax*, 3d ed.,
la Ginqantieme, *Leur Application* XXXIII.

§ 3] IN GREAT BRITAIN. 5

at one per cent, for each child. * The tax was reimposed in 1803 by Addington when the war broke out after the peace of

Amiens. This retained the exemption of incomes under £60, and further exempted the incomes of colleges and halls in universities, hospitals, public schools, and alms-houses, friendless societies and charitable institutions. It was the first statute that established the rule of deduction at the source. In 1805 this tax was increased by one fourth. *

In 1806 the Coalition Ministry of Grenville imposed a new income tax, in which the rate was raised to ten per cent. This statute, which seems to have been drawn by Lord Henry Petty, the Chancellor of Exchequer, was the model of the later legislation upon the subject. It narrowed the exemption of small incomes to £50, and then only when they belonged to laborers, farmers, members of the trades and professions, officers, pensioners, and life annuitants. Laborers and artisans, whose earnings were less than thirty shillings a week, were also exempt from the tax, and an abatement of a shilling on a pound allowed on all incomes between £50 and £150. It contained the other exemptions in the former acts slightly extended in the same direction, and continued the practice of deduction at the source. This tax continued until April 6, 1816, when Parliament refused to continue it beyond the end of its statutory term. *

The next income tax in England was imposed by Peel in 1842.° This was drawn by Joseph Timm, Solicitor of Stamps and Taxes. It imposed a tax of seven pence upon the pound, but was in other respects substantially a copy of the Act of 1806, with a few insertions such as specific references to gas-works and railways and the tithe commutation rent charge. Since then, an income tax has become a permanent part of British finance.

It was extended by Gladstone in 1853, ' and with few alter-

5 39 Geo. 3, c. 13. 1 16 and 17 Vict., c. 34. Uis most

* 43 Geo. 3, c. 122, 45 Geo. 3, c. famous speech was that delivered

49. April 18, 1853, in its support. See

6 46 Geo. 3, u. 65. the Finance Statements of 1853,

65 & 6 Viet. c. 35, printed in full 1860-1863, to which are added a

infra, part VI. speech on Tax Bills, 1861, and on

6 HISTOEY OF THE INCOME TAX. [§ 3

ations is the law throughout Great Britain to-day. By the Einance Act of 1907, introduced by Asquith when Chancellor of the Exchequer, it was increased to one shilling pound, with a reduction to nine pence a pound, upon so much of incomes less than £2,000 and above those absolutely exempt as was earned by the receiver. * By the Finance Act of 1910 first introduced by Lloyd George in 1909 and passed after the House of Lords had once defeated it, there was an increase to one shilling and

two pence a pound, with a reduction to nine pence a pound as to earned income paid by the receivers of less than £3,000 and above these exempted altogether.' Certain abatements are also allowed on incomes of less than £500. Incomes under

Charities, 1863, by the Et. Hon. W. benefit which he confers upon the E. Gladstone, London, 1863. community. It was said by H. S.

8 Act of Edw. VII. c. 13, quoted in Asquith, Chancellor of the Exchequer, in his budget speech of April

9 Act of Edw. VII, c. 8, printed 18th, 1907, that when we compare the United States has been criticized income from a safe investment in because of its omission to grant an the funds, which he has obtained exemption or reduced rate of tax- either by the result of his own sav- tion to the recipient of earned in- ings or by inheritance, and the other -come. The distinction between a man making the same amount by earned and unearned incomes, be- personal labor in a laborious and tween those which are industrial perhaps precarious profession or and spontaneous, between temporary some form of business, "to say that .and permanent incomes, between those two people are, from the point those from personal efforts, and those of view of the State, to be taxed from investments, between uncertain in the same way, is, to my mind, or variable, and certain or fixed in- flying in the face of justice and com- comes, which is the language of the mon sense." (Parliamentary De- Italian statute, or, as said by Glad- bates, A. D. 1907, vol. 172, p. 1198.) stone, between industrious and lazy The law of Italy taxes incomes that incomes; is recognized by statesmen are in whole or in part derived from as well as by economists. The in- personal exertion at a less rate than come which is earned by a profes- that applied to those which are un- sional man, or by one who embarks earned or spontaneous. The Select in a trade or risks his capital in Committee, of which Sir Charles W. an industrial enterprise, involves the Dillce was chairman, appointed by exercise of labor, self-denial or a Parliament on May 4th, 1906, in study of the future needs of man- their report on November 29th, 1906, kind, which it is for the interest recommended such a differentiation of the State to encourage and which by charging upon earned incomes a there is a tendency to discourage tax lower than the normal rate. (The when such income is subject to tax- Report from the Select Committee on ation. The production of income Income Tax; together with the Pro- that is inherited or invested in se- ceedings of the Committee, Minutes •curities is not likely to be dimin- of Evidence and an Appendix; lon- ished by taxation, and its receiver don, 1906.) Seligman's Income Tax, •derives the same irrespective of the 196-203. In accordance with these

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IN GREAT BRITAIN.

views, the British Act of August 9th, 1007 (7 Edw. VII, c. 13, quoted in full infra, part VI) provides: "Any individual who claims and proves, in manner provided by this section, that his total income from all sources does not exceed £2,000, and that any part of that income is earned income, shall be entitled, subject to the provisions of this section, to such relief from income tax as will reduce the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of nine pence." A subsequent subdivision of the section defines earned income as income arising in respect of remuneration from any office or employment of profit or in respect of any pension or compensation given in respect to past services of the individual or of the husband or parent of the individual in any office or employment of profit, and income derived from the exercise of a profession, trade or vocation.

This distinction was recognized in the early part of the Civil War. The New York Tribune said: "We do not think it right to tax an income which is the fruit of present personal exertion as though it were derived from an inheritance or from invested capital." (Jan. 23, 1862, p. 4, col. 5.) Later said the Commercial and Financial Chronicle: "Our income tax offers the anomaly of demanding precisely the same amount from a lawyer, a merchant, an editor, a clergyman, a physician, or a bank clerk, who may earn an income of \$5000 a year by his daily labor, as from a capitalist who sits in idleness and derives the same yearly income from sources which are subject to none of the precarious chances which may in a moment annihilate or curtail the income of the less fortunate but equally taxed professional and mercantile classes." (Feb. 10, 1866, p. 162, vol. 2.) The New York Times, when edited by Raymond, published a number of editorials to the same effect. (Feb. 5, 1867, p. 4, col. 4; Feb. 13, 1867,

p. 4, col. 3; Feb. 15, 1867, p. 4, col. 3; Feb. 19, 1868, p. 4, col. 4;

June 13, 1868, p. 4, col. 5; Jan. 11, 1870, p. 4, col. 5; Jan. 27, 1870, p. 4, col. 2; June 4, 1870, p. 6, col. 2.)
Smith's U. S. Federal Internal Tax History, 68, 69.

In 1870, General Benjamin F. Butler, of Massachusetts, objected in the House without success to taxation of the incomes from labor and proposed a tax of five per cent, confined to the income from invested capital. He said: "A principal difficulty of our income tax is that it mistakes earnings for income. It treats as income the products of honest labor, whether mental or physical. . . . I have accordingly put before the House and I hoped that I should have time to elucidate it, a proposition which would place an equal tax on invested capital, where it would justly be placed, so that all invested capital, as a source of income, shall pay taxes, and that the tax shall not be levied on earnings as a source of income." (Cong. Globe, 2d Sess., 41st Cong., 1869-1870, p. 3995, col. 2.) During the same session. Senator Warner, of Alabama, made a motion to the same effect, except that it limited such a tax to three per cent. Neither suggestion was adopted. (Ibid. p. 5082, col. 2.)

In the debate upon the income tax July 22d, 1913, Senator William E. Borah of Idaho said : "I have always believed that the income tax would be an educator for public economy. But if it does not prove so, Mr. President, then more and more must this great burden be put upon the large incomes of the country. Especially must it be laid with an ever-increasing weight upon the more idle incomes, the inactive, the settled and fixed incomes."

Later during the same speech he was interrupted by the query from Senator Crawford of South Dakota:

"Does not the Senator from Idaho think that in the provision here, among the possible defects in it, is the failure to distinguish between the class of incomes that can not be shifted and the class which may be shifted? For instance, a man earning a large salary in a profession through his effort and his ability

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[§ 3

may not have any property at all, but will he not be required to pay a tax based upon his income under the same rate that is paid by the idler, the drone, who is doing absolutely nothing to serve society, but who has inherited a large fortune and is spending his time in riotous living? In the Senator's judgment ought there not to be some distinction between incomes along that line? I know the Senator has studied this question profoundly - I do not claim to have done so - but does he not concur in saying that that is a weakness in the provisions of the bill?

"ile. BoBAH. Mr. President, that brings up another subject entirely; that is, the subject of differentiation with reference to incomes. Mr. Gladstone declared for 50 years that it never could be carried into effect, and Jlr. Pitt also declared that it was impossible to differentiate as to income. One reason why Jlr. Gladstone was opposed to an income tax as a permanent part of the taxing system was because it would be impossible to differentiate or discriminate between the man who went out daily and earned by actual physical labor \$5,000 a year and the man who had had left him a sum which brought him \$5,000 a year and for

which he did nothing at all. He said that, by reason of that fact, he was not in favor of an income tax as a permanent proposition; that it was only an emergency tax. But notwithstanding Mr. Gladstone's views, in my judgment Mr. Asquith and Mr. George have demonstrated that differentiation is possible, and they have carried it to a marked degree of success in England. However, Mr. President, that must necessarily come, in my judgment, after a good deal of experience and a good deal of study.

"While I am thoroughly in favor of the proposition, I should not expect to see it in the first income-tax law that passed the Congress, because it requires a vast amount of study, adaptation of the law to the conditions which you find in the country, and a classification of in-

comes which I have no idea in the world the committee was prepared to make. It did not have the classifications; it did not have the means, the statistics, or the data which they have been gathering for years in England by which to make the differentiation, although, as I have said, I am thoroughly in favor of the proposition. I think that a man who goes out and earns \$5,000 a year by actual effort, by devoting himself daily to his work, should not be taxed the same as a man who has an income of the same amount for which he does not turn a hand. It is flying in the face of justice and common sense to impose such a tax, but we must approach that after some years of experience. I could not find any fair justification for criticizing the committee for omitting that from this bill, although it must come in time; nevertheless this question which I am arguing indirectly reaches in that direction. I hope, however, later in the debate to say something on the subject of differentiation, not with the hope of putting it in this bill, but as a no-

tice that it must be inserted in any income law that is to represent the matured effort of legislation.

"Mr. Cawfoed. Mr. President, if the Senator will permit me, is not that a kind of income that can not be shifted so that the consumer somewhere will have to pay it? An income that is the result of personal effort, skill, and ability, and in which there is no property involved, can not be shifted.

"Mr. Borah. The time will undoubtedly come in this country, if we maintain an income tax, when we will have to differentiate as to incomes. If we are going to maintain an income tax, we have not only got to have a progressive rate of taxation, but we have got to differentiate as to incomes. As I said a moment ago, however, that will have to be after considerable experience and after the gathering of a great deal more data than we now have. It took England something like 60 years to secure the experience and the data by which she could adopt

§ 4] IN BRITISH COLONIES. 9

£150 are exempted under the present British Income Tax. ^* There are certain other exemptions which are extensions of those in the Act of 1806.

§ 4. Income taxation in the British Colonies and dependencies. Income taxation is also in force in the seven British colonies of Australasia as follows : In South Australia since 1884. This is progressive in its character, from 1.87 to 5.62^ per cent., it does not apply to income from land of no^ more than 5 per cent, of the value thereof which pays a land tax. There is an exemption of incomes of £200 or less and a sharp discrimination against unearned as distinguished from earned incomes.^ In New Zealand since 1891, progressing from 2-J to 5 per cent, with an exemption of incomes of no more' than £300 and of income from land which is separately taxed. * In Victoria since 1895, with an exemption of incomes of less than £200. There is a discrimination in favor of earned against unearned incomes and the amount is graduated from 1.25 to 5 per cent. Income from land is included. * In New South Wales since January 1st, 1896, at the rate of 2^ per cent, upon income not derived from land which is subject to a

it. It need not take us that long, subdivision of the bill, and they are but I did not hardly expect it at this put in the same class with the good-time. In fact, I am exceedingly glad for-nothing idler who is not even an to mark progress. If I could see this ornament, and who lives to dissipate exemption adjusted as I feel it ought and waste himself and be an injury to be, I would feel more encouraged to others. The English draw the- to take up the subject of differentia- line there, and I think we ought to tion." Senator William E. Borah, draw it there." (Cong. Record, vol. of Idaho, July 22nd, 1913. Cong. 50, p. 3815.)

Rec. vol. 50, Cong., 63d. Sess., 1, pp. 1" For more full accounts of the 2616, 2617. English legislation upon this sub- In the Senate August 27th, 1913, ject, see the preface to Dowell's In- Senator Crawford, of South Dakota, come Tax Laws; Seligman's Income moved the following amendment. Tax.

which was lost: "Provided further, § 4. 1 South Australia Taxation That in computing net income under Amendment Act of 1908; Kennan, subdivision 1 of paragraph A of Income Taxation, 24. this section there shall also be de- ^ See New Zealand Land and In- ducted the amount, if any, which come Revenue Act, A. D. 1908, No. is claimed and proved by any in- 95, §§ 75-90.

dividual to have been immediately ^ See Income Tax Act 1895, 88

and directly derived from the per- Vict. No. 1374, 3 Horwitz, Victoria sonal exercise by him of a profession, Statutes 423, 427; Income Tax Act trade, or vocation." He said: "Here 1896, 59 Vict. No. 1467, 3 Horwitz, and there men earn an income that 455. would be taxable under the first

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property tax, with an exemption of incomes of £200 or less. In Queensland since 1902, progressing at rates from 2^ to 5 per cent., with a discrimination in favor of earned against un- earned income. ^ In Tasmania since 1906. The rate is 5 per cent, and progressive in its nature, by means of a series of abatements, with a general exemption in the case of income derived from personal exertion. There is a "non-inquisitorial ability tax," which is proportioned to the rental paid, and an exemption of £30. ^ In Western Australia since 1907. A tax of If per cent, on incomes in excess of £200, with certain other exemptions, and an abatement for dependent children under sixteen years of age. '

In the Province of Ontario, Canada, the average rate of the income tax varied in the year 1907 from 1.15 per cent, upon rural to 2.26 per cent, upon city property, with an exemption varying from \$300, to \$1000, in favor of earned against un- earned incomes. This does not apply to the income from real estate, except interest on mortgage, which is subject to its

separate tax. ' In the Province of Alberta, Canada, income taxes are levied by a few towns and cities: In the city of Edmonton, upon all personal income in excess of \$1,000. The rate is that of the general property tax for each year. ' In British Columbia since 1903, progressing from 1[^] to 4 per cent., with an exemption in favor of incomes not exceeding \$1,000. "

In St. Vincent since 1897, progressing from 1 to 3 per cent. There is an exemption in favor of incomes of less than £50. ^* In Seychelles since 1900, at the rate of 1[^] per cent., with an exemption of incomes not exceeding £16. This, however, does not apply to the tax upon the rental value of property, which is assessed at the rate of from 3 to 4 per cent. ^^ In Cape Colony since May 31, 1904. This progresses from 2[^]

4 Kennan, Income Taxation, 19. 8 Kennan, Income Taxation, 48.

5 Ibid. 21. 9 Ibid. 50.

6 Ibid. 26. 10 Ibid. This Act was amended in

7 Act of Dec. 30, 1907; Act of 1907 in 3 & 4 Edw. VII, c. 53. June 3, 1908. An abstract of these H Kennan, Income Taxation, pp. is contained in Kennan, Income Tax- 181-182.

ation, pp. 33-34. 12 Ibid. 182.

§ 5] IN FRANCE. 11

to 5 per cent, and exempts incomes not exceeding £1,000, with the exception of limited liability companies and shareholders therein. ^'

In the Leeward Islands a statute imposing an income tax was passed in the Presidency of Antigua in 1900, which applies only to income from salaries, with an exemption of incomes of no more than £100. The rate varies from 1[^] per cent, upon incomes between £100 and £150 and 3 per cent, upon incomes above that amount. There is also an occupation tax upon professions and different kinds of commercial business. In the Presidency of Dominica there has been an income tax since 1899. This has graduated from 2[^] per cent, ■on incomes between £50 and £100 to 3[^] per cent, on those in excess of the latter sum, and an exemption of incomes of no more than £50. ^*

In India there has been an income tax since 1886, which progresses from 2 to 2J per cent, and an exemption of incomes of 1,000 rupees, about \$333.33, or less, except in the case of the profits of companies, from which no exemption is allowed. ^*

§ 5. Income taxation in France. In France, the Dixieme and Vingtieme of the eighteenth century failed of prac-

tical enforcement, except upon incomes from land. In 1871, a faculty tax was imposed upon the incomes of corporations and associations. Such taxes are there described as impôts de quotité. On March 29, 1914, a law was passed, to take effect on the following July 1st. This changed the land tax from a system of contributions by governmental subdivisions, which levied local taxes, to a tax of four per cent, upon the income with a deduction of eight francs to those whose assessment amounted to sixteen francs or less, when their personal tax was no more than twenty francs at their different places of residence. This also imposed a tax of four per cent, upon the income of stocks, bonds and other securities issued by corporations, foreign or domestic, private and public, including French

13 Ibid. 51-53. 16 Kennan, Income Taxation, pp.

it Kennan, Income Taxation, pp. 147-150.
161-163.

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colonies and foreign governments, payable at the source, -with an additional tax of one per cent., making the gross tax five-per cent, upon the income of foreign securities, public and private, upon which a tax proportioned upon their capital had not been paid in accordance with the previous laws as a condition to their being listed at the Bourse. ^ Agitation to secure the enactment of a law imposing a general income tax had been in progress in that country for more than half a century. ^ In 1909 a bill to impose such a tax with progressive features and a discrimination in favor of earned as distinguished from unearned incomes passed the Chamber of Deputies, but was defeated in the Senate. * Its introducer and most conspicuous advocate was Joseph Caillaux, although one of his own letters, recently published, admits that his support was not sincere. The movement in its favor since then continually grew in strength until the enactment on July 15,, 1914 of such a statute. The assassination by Caillaux's wife of an editor for publishing a letter by her husband, in which the latter admitted the insincerity of his advocacy of the legislation, gave a note of tragedy to the campaign. This law imposes a general tax of a minimum of two per cent. upon all incomes in excess of two thousand francs with the right to a further exemption of one thousand francs for each person whom the taxpayer is obliged to support, and when such persons exceed five an increase of the exemption to fifteen hundred francs for each. The tax is progressive in its nature, but makes no discrimination between earned and unearned income. Except in the case of income covered by the law of March 9t\ 1914, there is no provision for taxation by information, or deduction at the source.*

§ 5. 1 Journal Official, March 31, arguments in its favor will be found

1914. The regulations are published in Chailley, L'impôt sur le Revenu,

Ibid. June 22, 1914. Paris, 1884, and the speeches of Cail-

2 An admirable history of this is laux, some of which were published

given by Professor Seligman in his in a separate volume.

Income Tax Book II, Part I, Ch. II. 3 An analysis of the bill with quo-

The writers of the school of econo- tations from the debates is contained

mists, which was generally con- in Seligman'a Income Tax, pp. 315-

sidered orthodox, including Leroy 325.

Beaulieu, opposed the tax. The L_st * Journal Official, July 18, 1914.

§ 8] IN GERMANY AND LUXEMBOUEG. 13

§ 6. Income taxation in Italy. In Italy, an income tax was adopted by Cavour in 1864. ^ This has been subsequently amended by the law of 1894, which is now in force. The tax has been increased to 20 per cent., but is confined to incomes received in Italy. There is a discrimination in favor ■of uncertain income, namely, that which is earned, against certain income which is derived from investments. An abatement is allowed to the former. Deduction at the source is applied to the salaries of public officials and interest on the public debt, and in certain other cases. That rate of taxation is so high, however, that many frauds prevail and nearly all incomes .are assessed at much less than their actual amount.*

§ 7. Income taxation in Spain. Income taxation has also been in force in Spain since 1902. It has been said that this is not an income tax, and in that opinion has concurred the director general of taxation in Spain. It is described as a tax on the profits of personal property, contribution sohre uuilidades de la riqueza mohiliaria, and does not include the income from land, land being the subject of a distinct tax. The profits of labor, capital, and the combination of labor and ■capital are taxed at different rates, varying from 2 to 20 per cent., with no marked discrimination in favor of earned income. Day laborers and those receiving salaries of less than 1,500 pesetas, about \$290, are exempt. A remarkable item is the tax of 20 per cent, upon interest on government indebtedness, with certain exceptions.*

§ 8. Income taxation in Germany and Luxembourg.

On July 3d, 1913, the German Empire enacted a law imposing a special income tax to raise money to prepare for war. This taxed incomes at rates varying from one per cent, upon incomes between two thousand and ten thousand marks to eight per cent, upon incomes in excess of five hundred thousand marks, with certain exceptions. ' A general income tax has for some

§ 6. 1 Seligman's Income Tax, pp. drieux. Paris,]9]0. See Seligman's

.338-352; Kennan, *Income Taxation*, *Income Tax*, p. 352, note 2.
J.50-155. § 7. 1 Kennan, *Income Taxation*,

z *Les Fraudes dans l'Impôt Italien* 183-188.

^ur les Revenus de la Richesse Mo- § 8. 1 *Reichs-Gesetzblatt*, A. D.

MUire, Avec une Lettre-Pr^faoe de 1913, p. 505.

M. Luigi Luzzatti. Par Pierre Per-

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time existed in all the twenty-five States of the German Empire; except Bavaria, the two Mecklenburgs and Alsace-Lorraine which have imposed partial income taxes. ^ Income taxes, have been imposed in Prussia since June 24th, 1891. There is an exemption of income below nine hundred marks. The tax is graduated from 0.57 to 3 per cent, and there is a discrimination of one per cent, between earned and unearned income. ^ In Saxony, a law imposing an income tax was passed in 1874,, to take effect in 1878. This with certain modifications is still in force. * In Bavaria, there is an income tax, which, since 1856, has been confined to a tax on wages and salaries. ^ There has been income taxation in Hesse since 1869 ; ^ in Baden, since 1884;' in Saxe-Weimar, since 1883;^ in Anhalt, since 1886;' in Wiirtemberg, since 1903.^" In Luxembourg, since February 9th, 1891, an income tax which does not apply to real estate, varying from 1 to 3 per cent., with exemptions varying from one hundred to six hundred francs, and a discrimination in favor of earned against unearned income. *^

2 A detailed account - legislative Steuern in Baiern vom 13-19 Jahr- and statistical- of the tax system of hundred. Leipzig, 1883; and Vocke, each of the German states will be "Beitrage zur Geschichte der Eink- found in the Denkschriftenband zur ommensteuer in Baiern," TuUnger Begründung des Entwurfs eines ZeUschnft vols. 20 and 21. (7/. also Oeset.es betreffend Aenderungen im, f "'^^"'^ , °^^ Baynsche Ertragss- „■ ui- 1. J u ii? /I teuersystem und seine Entwicke- Exnanzwe,en, _ published by the Ger- j"" ., ^ .^ .^"" ^ ^ , .^^. ^^j ^^..

man Imperial Treasury (Rexohr (1900), pp. 551-772. Seligman's In- sschatzamt). Berlin, 1908. See ea- come Tax, 237, 260. For a descrip- pically the highly useful compara- tion of the income taxes in the dif- fere- tive tables on pp. 358-431. In the ferent states of the German Empire Appendix to this chapter will be see Kennan *Income Taxation* 107- found some of the important statis- 129; Seligman *Income Tax*, 329-338. tics as to the income tax. Selig- ^ Glassing, "Die Neugestaltung der man *Income Tax*, 261, note 2; Selig- direkten Staatsbesteuerung im Gross- man *Progressive Taxation*, 2d ed. herzogtum Hessen," *Finanz Archiv*, 48-51; Kennan *Income Taxation*, A. J°'- ^^^ (1900), pp. 178-360. See D 1910 Ch VII Sehgan, *Income Tax*, 259, note 3.

3 Seligman, *Income Tax*, pp. 250- 1 Seligman, *Income Tax*, 249.
ogg o ' ' ^i" 8 Seligman, *Income*. Ibid.

" 4'K6nigliche Sachsische Steuerge- io^|"^T"i. ^""°'°'!"t.^"!!!\-, , ..

seize, 1880; die Direkten Staats- h, 'u'L ^«f r""^ ^;^ Wiirttem-
 J. ■ Tr- ■ • u o 1, T • bergisehe bteuerreform" in Births
 steuern im Konigreich Sachsen, Leip- Annalen des Deutschen Reichs, 1904;
 '^^'^,- ^ ^ r, T, • 1 ^"'l Pistorius, "Die Wurttember-
 5 Cf. S. Gerstner, Das Baynsche gische Steuerreform," Finanz Archiv
 Einkommen-und Kapitalrentensteu- Vol. xxi (1904) pp. 1-114 Selie-
 ergesetz. Erlangen, 3858. See also man. Income Tax, p. 260, note 2.
 L. Hoffmann, Oeschichte der direkten n Kennan, Income Taxation, 163.

§ 10] I]Sr NORWAY, SWEDEN AND DENMARK. 15

§ 9. Income taxation in Austria and Hungary. In Aus-
 tria, income taxation was established in 1849. It was original-
 ly levied at the rate of five per cent., but by subsequent amend-
 ment it became progressive in its nature, so that in some
 cases it became as high as twenty per cent. This resulted in
 frauds and general assessments on income at much less than
 its actual amount. In 1896 a new system was adopted. This
 taxes all incomes in excess of twelve hundred crowns, with
 certain deductions, and is progressive in its nature, ranging
 from one to ten per cent. ^

In Hungary, since 1909, there has been a progressive income
 tax of from 1 to 5 per cent. ; an exemption of incomes of eight
 hundred crowns (about four hundred and six dollars) or less,
 and a supplementary tax varying from 0.2 to 16 per cent,
 upon salaries and pensions in excess of seven thousand crowns
 (about fourteen hvmdred and twenty-five dollars) ; and a dis-
 crimination against absentee landlords, upon whom treble the
 ordinary tax is imposed. ^

§ 10. Income taxation in Norway, Sweden and Den-
 mark. In Norway, income taxation was authorized in the
 separate municipalities by the Act of April 15th, 1882, which
 has been subsequently amended. ^ A State income tax was
 subsequently imposed. This is progressive in its nature vary-
 ing from 2 per cent, to 5 per cent, and also has certain abate-
 ments graduated upon the number of dependents and the
 amount of income. There is a general exemption of 1,000
 crowns, about \$270, for all incomes, except in the case of ab-
 sentees or nonresidents, who are entitled to an abatement of
 only 400 crowns. ^

In Sweden, there has been an income tax since 1897. Un-
 der the present law, passed July 21st, 1902, and subsequently
 amended in 1907 or 1908, the ordinary rate is one per cent.

§ 9. 1 Das Gesetz fiber die Direk- 8 Kennan Income Taxation, pp.
ten Personal Steuern v. 250 ct. 189. 145-147.

See Seligman, Income Tax 329-338; § 10. 1 Acta of May 30th, 1891,
Seligman Progressive Taxation, 2d July 20th, 1893, July 23rd, 1894,
ed. 58; Bundsmann, Die oster- July 1st, 1899.

reichische Personal-Einkommensteuer 2 Kennan, Income Taxation, pp.
Innsbruck, A. D. 1909. 164-172.

16 HISTOEY OF THE INCOME TAX. [§ 1^

And a scale of progression is obtained by a series of abate-
ments and additions. Incomes of less than 500 crowns, about
\$135, are exempt.'

In Denmark, since April 1st, 1904, * there has been an
income tax at a rate which progresses from 1.3 per cent, to 2.5
per cent. There have been exemptions dependent upon resi-
dence in large or small cities, or the country, and the children
or other persons supported by the taxpayer. The exemption
in rural districts is 600 crowns, about \$161, with an additional
exemption of 70 crowns, about \$19, for each child under fifteen
years of age. In market towns, of 700 crowns, about \$188,
with the same exemption for each such child. And in Copen-
hagen and Fredericksburg, of 800 crowns, about \$214, with
an additional exemption of 85 crowns, about \$23, for each
such child. The exemptions do not apply to nonresidents or
corporations, the taxation upon which is fixed at 2 per cent.

§ 11. Income taxation in Holland, Java and Belgium.

In Holland and Java, since October 2d, 1893, there has been
a tax upon industrial and other revenue, which falls upon in-
comes not subject to the property tax. A discrimination is
made in favor of earned against unearned income. The tax is
progressive with an increase in the pereniage from 0.15 to
4.13 and exemptions varying from 250 to 650 florins.'' There
are also local income taxes in diffl'ereⁿt communes.

No general income tax has yet been imposed in Belgium;
but there is a local income tax, which prevails in seventy-seven
out of the three hundred and forty-four communes in- the
Province of Brabant.^

§ 12. Income taxation in Svvtitzerland. In Switzerland
a Federal income tax has been proposed to meet the financial
stress caused by the European war of 1914. Previously there
was none in force, but income taxes have been levied in most
of the cantons of Switzerland for more than half a centurv.
They are usually progressive in their nature and discriminate
between earned and unearned income. These are too compli-

3 Kennan, *Income Taxation*, pp. 188-194. 1 Kennan, *Income Taxation*, 135-145.

*Act of May 15th, 1903. « Kennan, *Income Taxation*, 45.

§ 15] IN AMERICA. 17

■eated and various to find room for the inclusion of a description of them here.^

§ 13. Income taxation in Russia and Finland. In Russia there is no general income tax, but land is taxed at the rate of about 4 per cent, upon what it produces or could produce. There are also taxes of 5 per cent, upon the net profits of different corporations and joint-stock associations, and upon other commercial and industrial undertakings, a levy made for three years of the tax upon the basis of the estimated profits of the same, together with a tax of 5 per cent, upon the income of capital loaned or invested in interest-bearing securities. ^ In Finland an income tax went into effect about 1864, but since 1895 it has no longer been levied except for local purposes. This was slightly progressive in its nature and contained an exemption which finally was raised to incomes of less than 2500 markkaa, about \$483. A tax of one per cent, upon the salaries and pensions of public officers is still in force. *

§ 14. Income taxation in Japan. In Japan income taxation was established in 1899 and increased in 1904 to meet the expenses of the war with Russia. The amount varies from 2 to 20.35 per cent, and an exemption of incomes of no more than three hundred yen (about one hundred and fifty dollars) and certain other exemptions. ^ The tax is highly progressive. ^

§ 15. Origin of income taxation in America. The first income tax imposed in this country was one which economists prefer to denominate as a faculty tax. It was imposed in 1643 in the colony of New Plymouth, when assessors were appointed to rate all the inhabitants thereof "according to their estates or faculties, that is, according to things, lands, improved faculties and personal abilities." ^ Previously, the law of 1634, in Massachusetts Bay, provided for the assessment of each man

§ 12. 1 See Kennan, *Income Taxation*, 194-202. 1 Kennan, *Income Taxation*, 156-161. Seligman, *Essays on* pp. 156-161.

Taxation. S *Ibid.*

§ 13. 1 Kennan, *Income Taxation*, pp. 176-180. 1 Records of the Colony of New Plymouth (Pulsifer's ed.) Laws

2/6td. 1623-1682, Vol. XI, p. 42.
Foster Income Tlx.^ - 2.

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"according to his estate and with consideration of all other his abilities whatsoever." But there is no record of an assessment in that colony which did not fall upon property until the order of 1646 by the Court of Assistants of the Massachusetts Bay Company. This provided that "for all such persons as by the advantage of their arts and trades are more enabled to help bear the publick charge of common labourers and workmen, as butchers, bakers, brokers, smiths, carpenters, tailors, shoemakers, joiners, barbers, millers, and masons, with all other manual persons and artists, such are to be rated for returns and eains, proportionable unto other men for the produce of their estates." ' The present law of Massachusetts is the same, except that the word "faculty" was omitted in 1821 and in 1836 the word "handicraft," so that it now reads "as tax upon incomes from any profession, trade or employment." ' The example of Massachusetts was followed by the colony of New Haven in 1649,* and in Connecticut during the following year; ' in Rhode Island in 1673,^ and in Vermont in 1778.' A similar faculty tax was imposed in New Jersey in 1684.* Faculty taxes not dissimilar to these were also imposed in Pennsylvania during the Revolution in 1782 ; ^ in Delaware apparently about 1752 ; " in Maryland in 1777," and in Virginia in 1786.'^ None of these statutes, however, except in Massachusetts, Vermont and Connecticut, survived the eighteenth

2 Colonial Records of Massachusetts Papers, p. 295. Seligman's Income Tax, p. 377.

Cf. Charters and General Laws of 8 Learning & Spicer Laws of New Jersey, 1664-1701, p. 494.

p. 70. Professor Seligman considers 9 Dallas Laws of the State of Pennsylvania, II, p. 8.

be called a faculty tax. 10Laws of the Government of New

8 Seligman's Income Tax, p. 368. Castle, Kent and Sussex upon Dela-

* Records of the Colony and Plan- ware, Phila., 1752, p. 234. See, also,, tation of New Haven, I, p. 494. the Delaware Law of 1796. Ameri-

6 Colonial Records of Connecticut, can State Papers, Finance, I, p. 429.

I' P- 548. Seligman's Income Tax, pp. 378, 379.

6 Colonial Records of Rhode Island, 11 Maryland Laws of 1777 ch 22

^K PP-o^v°' ^-^?- .^^^ ^^''^- ™' P- §§ 5, 6. See, also, Maryland Lawi
300. Seligman's Income Tax, pp. of 1779, ch. 35, § 48.

^^^'o^'lv ^^ Hening's Virginia Statutes, XII.

7 See Vermont Laws, 1779; Slade's p. 283; XIII, p. 114.

§ 16] IN THE UNITED STATES. 19

century, and that of Massachusetts is the only one which is
still in force. ^*

§ 16. Income taxes in the several United States. Among
the several United States income taxes are imposed in Massa-
chusetts, ' Virginia,* North Carolina,^ South Carolina,* Tennes-
see,* Wisconsin ^ and Oklahoma ; '' and also in Hawaii.'

In the Philippines, the Spanish Industria of 5 per cent,
upon salaries, dividends, income from investments and busi-
ness profits with certain exemptions and abatements was re-
pealed by the Internal Revenue Law of 1904, promulgated
by the Philippine Commissioners, July 2, 1904.* This imposed
a license tax upon merchants and manufacturers of one peso
or 50 cents quarterly for each 300 pesos of sales during the
period, that is ^ of 1 per cent, of the gross receipts.'*

13 Seligman's Income Tax, pp. 388- 155 ; L. 1908, p. 20. See Plumer v.

399. Commonwealth, 3 Gratt. 645. This

§ 16. iMass. Gr. S. oh. 11, § 4; has produced more taxes than such

Wilcoao V. Middlesex County Commis- a tax in any other state of the Union.
sioners, 103 Mass. 544; Melcher v. Kennan, Income Taxation, 232.

Boston, 9 Met. 73, 43 Am. Dec. 367. 8 N. C. L. 1907, ch. 256, §§ 22-25.

"The larger questions connected with See Purnell v. Page, 133 N. C. 125,
the taxation of business and of cor- 45 S. E. 534.

porate property have completely over- * S. C. Civ. Code 1902, §§ 325-331 ;

shadowed the problem of what to do Lining v. Charleston, 1 M'Cord, L.

with the remnants of the faculty tax. 345, a municipal ordinance.

The assessment of salaries and per- s Tenn. Code, §§ 690, 710.

sonal incomes has virtually disap- ^ Income Tax Cases, 1 48 Wis. 456,

peared except in an occasional in- 134 N. W. 673, 135 N. W. 164, Ann.

stance of a college professor or of a Cas. 1913A, 1147, infra, § 8.
 state official, and in the few cases ' ' Okla. L. 1907, p. 730.
 where business incomes are assessed ' Hawaii Sess. Laws, 1901, No. 20,
 at all, the assessment is added to the PP- 31-35. This was held to be
 personal property tax and does not constitutional in Peacock v. Pratt,
 figure separately on the tax books. 58 C. C. A. 48, 121 Fed. 772. A
 What is therefore still called the in- former income tax in Hawaii (Act
 come tax in Massachusetts is nothing of June 12, 1896) was held to be
 but an unequal and entirely arbi- unconstitutional. Campbell v. Shaw,
 trary additional assessment upon a H Haw. 112.
 few members of the professional ^ A General Act for the Organiza-
 classes and a few large business men tion of Provincial Government in the
 selected at haphazard in Boston and Philippine Islands, published by au-
 one or two other towns. Instead of thority of the Philippine Commis-
 being an income tax, it is nothing sion. No. 83, July 2, 1904, § 146, p.
 but a simulacrum of an income tax; 114. Kennan, Income Taxation, 174-
 instead even of being a faculty tax 176.
 such as existed during colonial days, 1" John S. Hord, Collector of In-
 it has become nothing but the torso ternal Revenue in the Philippines,
 of a faculty tax." Seligman's In- Johns Hopkins University Studies,
 come Tax, 397, 398. Vol. 25 (Jan. 1907), p. 7. Kennan
 8Va. L. 1898, p. 20; L. 1903, p. Income Taxation, 176.

20 HISTOET OF THE INCOME TAX. [§ 16

In Panama there is a tax of 5 per cent, upon the probable
 annual income of city property. Male residents are divided
 into classes varying from those whose income is less than five
 hundred dollars to those whose income is three thousand dol-
 lars or more a year. Upon each of these is imposed a certain
 number of days' labor upon the public works every year, vary-
 ing from three days' work for those of the lowest to ten days'
 work for those of the highest class, and permission to those

whose income is no more than one thousand dollars to commute the labor by cash payments and compulsion upon those whose income is in excess thereof to pay in cash the equivalent of the number of days' labor imposed upon them.^* In the past income taxes have been also imposed in Alabama,^* Connecticut,^* Delaware/* Florida, *° Georgia,*^ Kentucky," Louisiana,^' Maryland,** Missouri,*" Pennsylvania,** Tennessee,** Texas,*' and West Virginia.** Most of these were faculty taxes.*^

11 Panama Law of 1904, No. 88, as Laws p. 109. An occupation tax, L. amended by Panama Law of 1909, 1864, Act 55, § 3; Wew Orleans v. No. 32; translated and printed in Mart, 14 La. Ann. 815, 66. Forman full. Kennan, Income Taxation, v. Board of Assessors, 35 La. Ann. 172-174. 825.

12 A tax on gross receipts; also 19 Md. L. 1841-1842, c. 325. Revised Code, § 435; Lett v. Hub- 20 Mo. Sess. Acts of 1865, p. 112, bard, 44 Ala. 593. Feby. 20, 1865; Glasgow v. Bowse,

13 This was a survival of the 43 Mo. 479.

colonial tax and was abolished in 21 Pa. L. 1840, No. 232, § 2;

1819; Conn. Sess. Laws of 1819, p. L. 1841, No. 117, § 9; L. 1844, No.

338; Report of the Special Commis- 318, § 33; L. 1854, No. 610, § 30;

sion of Connecticut on the subject L. 1857, No. 667, § 2.

of taxation. New Haven, 1887, pp. 22 L. 1883, No. 109, ch. 106, upon

9-10 ; Seligman's Income Tax, 389. income from bonds exempt from taxa-

14 An occupation tax, L. 1869, ch, tion, and from shares of stock in a Repealed L. 1871. corporation exempt from taxation.

15 An occupation tax, L. 1845, ch, A tax of five per cent, upon income 10; L. 1850, ch. 3; Repealed L. 1855, from U. S. bonds and from other <=h. 715. stocks and bonds not taxed ad valor-

16 Ga. L. 1863, Extra Session, Title em, as these were unconstitutional 18, Sec. 156. See The Income Tax they seem never to have been en- in Georgia Journal of Political forced. L. 1895, ch. 120, § 10; L. Economy, 1910, XVIII, 610-627. 1903, ch. 258, § 8, apparently not

17 Ky. L. 1867, vol. I, ch. 1832, repealed.

confined to income from United 23 Texas L. 1863, u. 33, § 3; L.

States bonds. Held to be uncon- 1870, c. 84, § 32.

stitutional in Bank of Kentucky v. 24 w. Va. L. 1862, 1863, c. 64, §

Com. 9 Bush (Ky.) 46. 8.

18 La. Act of Mch. 19, 1856, Sess. 25 Their history is set forth in

§ 17] TEDEEAIi INCOME TAXES. 21

The Constitutions of Virginia, North Carolina, Tennessee, Texas, and California authorize an income tax. In Virginia, the tax is limited to such annual incomes as exceed \$1,000. In North Carolina and Tennessee it cannot be imposed on incomes derived from taxed property.

The Confederate Congress in 1863 enacted a progressive income tax. This exempted incomes below \$500 and increased until it reached incomes of \$10,000 and over, upon which was imposed a tax of 15 per cent. Salaries of those in the military or naval service were exempted and so were all salaries of less than \$1,000. Salaries between \$1,000 and \$1,500 were taxed 1 per cent, and all above that amount 2 per cent.^ The tax. was subsequently increased 10 per cent, making the maximum. 25 per cent, and a uniform tax of 25 per cent, upon the net. income of corporations and joint-stock companies.^

§ 17. History of Federal income taxes. During the war of 1812, a Federal income tax was suggested by Dallas, the Secretary of the Treasury, and would probably have been adopted had it not been for the peace which immediately ensued.^ The Direct Property Tax Act of August 5, 1861, also imposed a tax of three per cent, on the excess of all incomea over \$800, which, however, was never collected.^ These provisions of the Direct Property Tax Act were repealed by the Act of July 1, 1862,' which imposed an income tax of three per cent, upon the excess of annual incomes between \$600 and \$10,000 at the rate of five per cent, on the excess when the income exceeded \$10,000. The Act of June 30, 1864, increased the rate between \$600 and \$5,000 to five per cent, j

Kennan's Income Taxation, 209-236; for the Common Defence and Sup-

Seligman's Income Tax, 388-429; port of the Government. Chap.

Kinsman's Income Tax, Publications LXIV, Public Laws of the Con-

of the Am. Econ. Ass'n, 3d series, federate States of America passed

vol. IV, No. 4. at the Fourth Session of the First

26 Act of April 24, 1863, c. Congress, 1863-1864. Edited hjr XXXVIII, Public Laws of the Con- James M. Matthews. Richmond, federate States of America, passed 1864, p. 209.

at the Third Session of the First § 17. 1 Seligman, Income Tax,

Congress, 1863. Edited by James 430.

M. Matthews. Richmond, 1863, pp. 2 12 Stat, at L., chap. 45, p. 309,

115 et seq. A detailed description §§ 49-61.

is contained in Seligman's Income 3 12 Stat, at L., ch. 119, p. 473,,
Tax, pp. 485-492. §§ 89-93.

27 An act to levy additional Taxes

22 HISTOEY OF THE IITCOME TAX. [§17

between \$5,000 and \$10,000 to seven and one half per cent. -^
and over \$10,000 to ten per cent, upon the excess of income
over \$600.* The Joint Eesolution of July 4, 1864, imposed
a special tax upon the excess of incomes over \$600 for the
preceding year only.'

The Act of March 3, 1865, amended the Act of June 30,
1864, and increased the rate to ten per cent, upon the excess
of income over \$5,000.* The Act of March 2, 1867, repealed
the progressive tax and imposed five per cent, on the excess of
income over \$1,000 until 1870 ; ' and in 1870 the Act of July
14 reduced this tax to tvi^o and a half per cent, for that year and
1871, when the tax expired and was not re-enacted.'

The next was the income tax of two per cent, upon the ex-
cess of all incomes over \$4,000 and upon the incomes of all
corporations, companies, and associations other than partner-
ships, which was imposed by the Act of August 27th, 1894.^
This was held to be unconstitutional." The Act of August
5th, 1909, imposed a tax upon the net incomes, over and above
\$5,000, received by corporations, joint-stock companies, or asso-
ciations organized for profits and having a capital stock repre-
sented by shares, and every insurance company, organized, in the
United States or organized under the laws of a foreign country
and engaged in business in the United States, with certain ex-
ceptions." This was held to be constitutional.^* The Act of
September, 1913, imposes a progressive or graduated tax be-
ginning at one per centum upon the' net income above \$3,000 of
individuals; then two per centum upon net incomes between
\$20,000 and \$50,000, three per centum thereupon between
\$50,000 and \$75,000, four per centum thereupon between \$75,-
000 and \$100,000, five per centum thereupon between \$100,-

4 13 Stat, at L., ch. 173, p. 281, 759, 15 Sup. Ct. Rep. 673, 158 U.

§§ 116-123. S. 601, 39 L. ed. 1108, 15 Sup. Ct.

6 13 Stat, at L., 417. Rep. 912, § 38. See infra, § 19.

6 13 Stat, at L., ch. 78, p. 479, "36 Stat, at L., 11, chap. 6, U.

§ 1. S. Comp. Stat. Supp. 1911, p. 741,

V 14 Stat, at L., ch. 169, p. 477. published in full, infra.

8 16 Stat, at L., ch. 255, p. 257, The bill is said to have been draft-
§§ 6-17. ed by Attorney General Wickersham.

9 28 Stat, at L., 509, chap. 349. 18 Flint v. Stone Tracy Co. 220 U. Published in full, infra. S. 107, 55 L.ed. 389, 34 Sup. Ct. Rep.

10 Pollock V. Farmers' Loan & 342, Ann. Cas. 1912 B, 1312, pub- Trust Go. 157 U. S. 429, 39 L. ed. lished in full, infra. Part VII.

§ 17] FEDERAL INCOME TAXES. 23

€00 and \$250,000, six per centum thereupon between \$250,000 and \$500,000 and seven per centum upon an income above \$500,000, and together with a fixed tax of one per centum upon the net incomes of corporations, joint-stock companies or as- sociations and insurance companies; with certain exceptions -and exemptions. This last is the subject of this work.^*

13 The bill was drafted by Eepre- Finance Committee and referred to aentative Cordell Hull, of Tennessee. Democrat caucus.

The following shows the ohronologi- July 11 - Bill reported to Senate cal history of the bill. by Chairman Simmons with recom-

1913, January 6 to February 1 - mendation that it pass.

Hearings, House Ways and Means July 21 - Made unfinished business Committee. of Senate.

April 7 - Bill introduced by Mr. September 9 - Passed by Senate;

Underwood and referred to the Ways yeas, 44; nays, 37.

and Means Committee. September 11 - House non-concurs

April 22 - Bill reported by Mr. in Senate amendments and bill goes

Underwood after Democrat caucus to conference,

had approved it. September 26 - Conferees reach

May 8 - Passed House of Repre- final adjustment, aentatives; yeas, 281; nays, 139. October 2 - Senate agreed to con- May 9 - Received by the Senate ferenace report and passed bill as and referred to Finance Committee, amended.

June 20 - Bill completed by Senate October 3 - House did the same.

President signed bill.

The tax collected during the first fiscal year that the act was in operation, namely, that ending June 30, 1914, amounted to \$71,381,274.69, distributed as follows:

Corporation excise tax \$10,671,077.22

Corporation income tax 32,456,662.67

Individual income tax 28,253,534.80

The amount of the income tax collected from corporations was computed on net incomes accruing for the calendar year 1913, five-sixths of the tax being reported as income tax, and one-sixth as excise tax, as provided in the statute. The excise tax was increased by similar collections of taxes assessed on account of business done during prior years and amounted in the aggregate to \$10,671,077,223.

Individual income tax was computed upon five-sixths of net incomes accruing for the calendar year 1913. The collections from this source as classified to conform to the provisions of the act were as follows:

Income tax, normal \$12,728,038.02

Income tax, additional:

Net incomes exceeding \$20,000 and not more than \$50,000 2,934,754.40

Net incomes exceeding \$50,000 and not more than \$75,000. . 1,645,639.30

Net incomes exceeding \$75,000 and not more than \$100,000 1,323,022.61

Net incomes exceeding \$100,000 and not more than \$250,000 3,835,948.40

Net incomes exceeding \$250,000 and not more than \$500,000 2,334,582.95

Net incomes exceeding \$500,000 3,437,850.23

Offers in compromise, &o 1 3,698.89

Total \$28,253,534.80

24 HISTORY OF THE INCOME TAX. [\$1*^

It appears, consequently, that 55% came from incomes in excess of \$20,000 and more than 331% from incomes in excess of \$100,000.

They have been classified by the Treasury Department as follows:

Number

Classification. of Returns

\$2,500 to \$3,333.33 79,426

.\$333.33 to 5,000 114,484

5,000 to 10,000 101,718

10,000 to 15,000 26,818

15,000 to 20,000	11,977
20,000 to 25,000	6,817
25,000 to 30,000	4,164
30,000 to 40,000	4,553
40,000 to 50,000	2,427
50,000 to 75,000	2,618
75,000 to 100,000	998
100,000 to 150,000	785
150,000 to 200,000	311
200,000 to 250,000	145
250,000 to 300,000	94
300,000 to 400,000	84
400,000 to 500,000	4
500,000 to 1,000,000	91
1,000,000 to and over	44
Total	357,598

Married women who made separate returns numbered 6,682, the total of all married persons making returns was 278,835; the single men numbered 55,212 and the single women 23,551.

The receipts from the New York districts were as follows:
 First, corporation tax, \$450,853; individual tax, \$635,985; Second, corporation tax, \$5,889,028; individual tax, \$7,950,078; Third, corporation tax, \$1,637,026,103; individual tax, \$2,761,986; Fourteenth, corporation tax, \$485,557; individual tax, \$445,184; Twenty-first., corporation tax, \$338,982; individual tax, \$201,294; Twenty-eighth, corporation tax, \$964,849; individual tax, \$528,726.

New York State contributed the largest share of the income tax as follows :

Corporation excise tax	\$2,318,311.41
Corporation income tax	7,447,600.1 9
Individual income tax	12,522,797.34
Total	\$22,288,708.94

§ 17] FEDEEAL INCOME TAXES. 25

The following figures, which were given out by the Secretary, are subject to revision upon the analysis of complete returns:

Corporation, Individual

excise and income

Districts. income taxes. tax.

Alabama, including Mississippi \$300,796.74 \$102,586.10

Arkansas 110,784.10 41,239.25

1st California, including Nevada 1,517,643.64 605,594.63

6th California 584,771.09 282,455.74

Colorado, including Wyoming 399,899.59 119,410.79

Connecticut, including Rhode Island 1,030,935.19 733,450.71

Florida 127,085.22 108,800.43

Georgia 359,845.26 115,874.11

Hawaii 116,912.63 34,822.62

1st Illinois 3,835,403.50 1,915,149.92

5th Illinois 187,289.51 48,855.73

8th Illinois 154,023.85 78,310.31

13th Illinois 116,932.82 33,855.15

6th Indiana 570,586.48 134,489.10

7th Indiana 121,838.74 46,281.66

3d Iowa 388,388.43 141,136.62

4th Iowa (July, 1913) *4,721.49

Kansas 329,087.07 49,960.11

2d Kentucky 34,889.77 10,466.17

5th Kentucky 259,765.27 60,070.01

6th Kentucky 22,814.67 6,524.20

7th Kentucky 44,540.10 17,550.10

8th Kentucky 33,046.49 3,634.14

Louisiana 397,092.96 159,056.91
 Maryland, including District of Columbia;
 Delaware and eastern shore of Virginia . . . 748,874.45 832,276.1 4
 3d Massachusetts 1,933,559.69 1,570,506.61
 1st Michigan 1,310,332.61 940,764.69
 10th Michigan 271,892.18 71,454.12
 Minnesota 1,509,592.88 372,527.41
 1st Missouri , 990,769.20 487,176.63
 6th Missouri 373,823.31 169,882.18
 Montana, including Utah and Idaho 419,148.55 80,357.26
 Nebraska 237,195.22 76,857.75
 New Hampshire, including Maine and Ver-
 mont 419,520.68 213,861.95
 1st New Jersey 278,402.42 201,106.08
 5th New Jersey 1,247,387.85 515,509.13
 New Mexico, including Arizona 136,618.76 39,061.77
 1st New York 450,803.86 635,985.48
 2d New York 5,889,028.41 7,950,070.02
 3d New York 1,637,026.03 2,761,986.38
 14th New York 485,557.88 445,184.64
 21st New York 338,982.46 201,294.48
 28th New York 964,849.93 528,726.03
 4th North Carolina 147,339.68 27,363.86
 5th North Carolina 159,846.31 19,202.69
 North and South Dakota 122,905.07 32,997.00
 1st Ohio 533,680.15 263,035.1 8
 10th Ohio 530,901.70 166,070.72
 •Fourth Iowa district consolidated with Third district August 1, 1913.

26 HISTOEY OF THE INCOME TAX. [§ 17

11th Ohio	243,044.99	69,802.42
18th Ohio	1,093,403.53	395,599.81
Oklahoma	225,065.74	93,082.15
Oregon	235,120.41	909,054.36
1st Pennsylvania	2,852,229.32	2,012,513.61
9th Pennsylvania	452,108.59	261,813.97
23(i) Pennsylvania	2,791,967.37	901,767.80
South Carolina	102,126.48	25,816.08
Tennessee	279,341.01	98,277.59
3d Texas	1,874.32	361,965.21
2d Virginia	304,816.17	70,112.30
6th Virginia	206,615.85	32,525.74
Washington, including Alaska	426,455.59	124,902.39
West Virginia	332,327.75	94,627.97
1st Wisconsin	507,590.21	190,672.91
Totals	\$43,079,839.42	\$28,306,336.69

tSouth Carolina district re-established September 1, 1913, previously having been a part of the Fourth North Carolina district.

One-third of the burden of the in- States, Nevp York, Pennsylvania, and come tax fell on the State of New Illinois, was more than \$37,000,000, York. Pennsylvania ranked second which means that they paid more with collections of \$9,272,400.66. than half the total income tax col- Third in relative rank was Illinois lected. Statement by Secretary of with collections of 6,369,820.79. the Treasury, July 3, published in

The collection from these three N. Y. Sun, July 4, and Oct. 23, 1914.

CHAPTEK 11.

CONSTITUTIONAL OBJECTIONS TO THE STATUTE.

§ 18. Constitutional objections which may be raised to the income tax law. The Act imposing the Income Tax of 1894 was held to be unconstitutional as a direct tax not appor-

tioned among the several States in proportion to their inhabitants and consequently obnoxious to the provision of the Federal Constitution concerning direct taxation.^ On February 25th, 1913, the Sixteenth Amendment to the Constitution of the United States certified as adopted. This ordains: "Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." ^ Another objection now may be

§ 18. I Pollock V. Farmers' Loan Feb. 11, 1911; Kansas, Feb. 18, <f TrMS* Co. 157 U. S. 429, 39 L. ed. 3911 ; Colorado, Feb. 20, 1911; 759, 15 Sup. Ct. Eep. 763, 158 U. North Dakota, Feb. 21, 1911; Miehi-S. 601, 39 L. ed. 1108, 15 Sup. Ct. gan, Feb. 23, 1911; Iowa, Feb. 27, Rep. 912. For note on constitution- lOli; Missouri, Mar. 16, 1911; "7 ality of income tax generally, see Maine, Mar. 31, 1911; Tennessee, ■ 27 L.R.A.(N.S.) 864. Apr. 7, 1911; Arkansas, Apr. 22, 2 37 Stat, at L. 1785. The dates 1911; Wisconsin, May 26, 1911; New of the respective ratifications were York, July 12, 1911; South Dakota, as follows: By Alabama, Aug. 17, Feb. 3, 1912; Arizona, Apr. 9, 1912; 1909; Kentucky, Feb. 8 or 9, 191 0-; Minnesota, June 11, 1912; Louisiana, South Carolina, Feb. 19, 1910; 111- July 1, 1912;. Delaware, Feb. 3, inois, Mar. 1, 1910; Mississippi, 1913; Wyoming, Feb. 3, 1913; Mass- Mar. 7, 1910; Oklahoma, Mar. 14, achusetts, Mar. 4, 1913; New Hamp- 1910; Maryland, Apr. 8, 1910; shire, Mar. 14, 1913; New Jersey, Georgia, Aug. 3, 1910; Texas, Aug. Feb. 5, 1913; New Mexico, Feb. 5, 17, 1910; Ohio, Jan. 19, 1911; Idaho, 1913; Vermont, Feb. 19, 1913; Jan. 20, 1911; Oregon, Jan. 23, West Virginia, Jan. 31, 1913. An 1911; Washington, Jan. 26, 1911; account of the proceedings in the California, Jan. 31, 1911; Montana, legislatures of the first nine States Jan. 31, 1911; Indiana, Feb. 6, may be found in Kennan's Income 1911; Nevada, Feb. 8, 1911; North Taxation, 296-300. Carolina, Feb. 11, 1911; Nebraska,

27

28 CONSTITUTIONAL OBJECTIONS TO THE STATUTE. [§ 18

made, whicli has not been decided, namely, that the exemption of persons with an income of less than \$3,000 is so unreasonable as to make the imposition upon the rest not a tax but confiscation; and consequently unconstitutional as the taking of the taxpayer's property without due process of law.* The validity of the additional tax, or super tax, may also be disputed.* The tax may also be contested as not uniform.* Non-residents may claim exemption upon the ground that Congress has no power of extra-territorial legislation.* Contractors with States and municipalities, as well as State and municipal employees, may deny the power of Congress to tax their emoluments.' It has been contended that the taxation of incomes received before the passage of the Act is unconstitutional,*^ and that, so are the provisions for the deduction of the tax at the source.^ The provision of the Revised Statutes authorizing the Federal courts to punish as a contempt the disobedience to a summons by a collector, may be attacked as not judicial

power, and as consequently a power which cannot be vested in these courts.'" The provision authorizing a collector thus to examine a taxpayer and to compel the production of his books of account may further be attacked as an infringement of the Fifth Amendment of the Constitution, by compelling a person to testify against himself.^^

These objections will be considered separately.

§ 19. The Pollock Case. The student of the strategy of litigation will find much that is instructive in the history of this law suit. Although several counsel were engaged in the attack upon the statute, the credit for the success is due principally to the efforts of Mr. Joseph H. Choate and Mr. William D. Guthrie, of the New York bar.' The obstacles in their path seemed unsurmountable. Income taxes had been levied

3 Infra, § 23. § 19. 1 The late Charles F. South-

* Infra, § 20. mayd, Benjamin H. Bristow, Clar-

i Infra, § 22. ence A. Seward, David Wilcox and

6 Infra, § 26. Mr. Charles Steele were with them on

"i Infra, § 27. the first brief. Mr. Seward signed

8 Infra, § 29. the separate argument, which con-

9 Infra, § 25. tained the discussion of the proceed-

10 Infra, § 30. ings in the Federal Convention. Mr..

11 Infra, § 31. Choate thus generously spoke con-

■§ 19] THE POLLOCK CASE. 29

and collected by the United States throughout the Civil War and for seven years thereafter, a period exceeding a decade. More than six Acts of Congress imposing them had been passed/ and the validity of such legislation had been adjudi-

cerning his partner's work: "I from which the rent was derived,

might almost say with entire truth and was therefore necessarily a di-

that it was Southmayd, who never rect tax; a tax upon the income of

went near the Court, who won the accumulated personal property

case. He was then seventy years could not be distinguished in prin-

old; ho had retired from practice ciple from the tax on rents; and

ten years before, and all that time these all being found to be direct

he had refrained from any legal taxes, and therefore unconstitutional labor. In fact, as he claimed, he ally levied, the court in annulling has ceased to be an attorney at law, then must find that Congress with- and when he had occasion to put his out them would not have enacted name to a brief, he always signed the rest of the tax, and therefore 'Charles F. Southmayd in person.' must declare the whole act void.

"What he regarded as the iniquity "This was the whole argument of the income tax aroused all his in a nutshell, and it all rested upon old-time energy. By this time he his first proposition, which was ab- had an ample income of his own solutely unanswerable then and is which was affected, and he had a unanswerable now, and can never be strong idea of the right of property answered, except by an amendment being at the foundation of civilized of the Constitution, which I, for government. Other men have five one, hope will never be carried senses, but he had a sixth - the through, because it will throw al- sense of property - very keen and most the . whole burden of every very powerful; and he also had an Federal income tax upon a very few abiding allegiance to the Constitu- of the larger States. However that tion under which the country had may be, it was his masterful brief so long prospered, and an abhorrence that drove the entering wedge which of any violation of it. So, when he by its cleavage demolished the act, heard that I was to be in the case, while the rest of us who appeared he volunteered to -prepare a brief, in court, and argued the cause to which proved, when completed, to be its final conclusions, on the founda- the keystone of the whole argu- tion which he had laid, won an un- ment, and, indeed, of the decision due share of the glory. I have which overthrew the act of Con- heard from the Clerk's office that gress. The Constitution had pro- all the judges called for extra copies

vided that direct tax[^] should be of his brief, but for none of the apportioned among the States as others." Memorial of Charles F. according to their respective numbers, Southmayd (Reports of N. Y. City but this act had levied all taxes upon Bar Ass'n 1913, pp. 191-192). Ex- on income, from whatever source Senator George F. Edmunds, with derived, indiscriminately upon all whom were associated, upon his brief, alike, without such apportionment. Messrs. Samuel Shellabarger and "To his clear mind, whatever else Jeremiah M. Wilson, argued the case might be disputed, a tax on land of Moore v. Miller, No. 915, an ap- was certainly a direct tax within appeal from the Supreme Court of the the meaning of the Constitution, District of Columbia, 163 U. S. and a tax upon the income of land 696, 41 L. ed. 310, which involved could by no possibility be distinguished from a tax on the land 2 12 Stat, at L. ch. 45, p. 309, itself, for it was a tax on the land §§ 49-51; 12 Stat, at L. ch. 119, p.

30 CONSTITUTIONAL OBJECTIONS TO THE STATUTE. [§ 1[^]

cated by at least four decisions of the Supreme Court of the United States.* All of these statutes had imposed a general Income Tax upon the income from real as well as personal property. After an income tax had been collected for six years and some of the decisions which sustained it had been made, the section of the Constitution relating to the apportionment of representatives and of direct taxes was amended by the Fourteenth Amendment so as to change the rule as to representation, but the language concerning direct taxation was left unaltered. Had there been any uncertainty in the minds of lawyers as to the sustenance of similar legislation in the future by the supreme court there can be little room for doubt but that this Amendment would have granted express authority to enact the same.* All three of the Departments of the Government, and at least three-fourths of the States[^] had consequently acquiesced in this construction of the Constitution. The only distinction of importance between these and that which was now attacked consisted in the great increase of the exemption, from six hundred or eight hundred

to four thousand dollars. The justifications for such an exemption and the economical arguments in support of income

/taxation had not, as in Germany and France, been the subject of much discussion, and the judges, as well as the people of the United States at large, were consequently not familiar with them. By reason of this exemption, more than four-fifths of the income tax imposed by the Act of 1894 was payable by four of the States, New York, New Jersey, Pennsylvania and Massachusetts, and in a number of the other States its inci-

jdence did not affect more than a very few individuals. The public press in those, as well as in some of the other States,

'made a vigorous attack upon the legislation as an injustice

473, §§ 89-93; 33 Stat, at L. ch. Bank v. U. S. 101 U. S. 1, 25 L

173, p. 281, §§ 116-123; 13 Stat. ed. 979; Springer v. U. S. 102 U.

at L. 417; 13 Stat, at L. ch. 78, S. 586, 26 L. ed. 256.

p. 479, § 1; 14 Stat, at L. ch. 169, * See the dissent of Mr. Justice-

p. 477; 16 Stat, at L. ch. 255, p. White in PoZlock v. Farmers' Loan

257, §§ 6-17. & Trust Co., 158 U. S. 601, 715, .

3 Pacific Ins. Co. v. Soule, 7 Wall. 30 L. ed. 1108, 1153, 15 Sup. Ct.

433, 19 L. ed. 95; Scholey v. Rew, Rep. 912; Foster on the Constitu-

23 Wall. 331, 23 L. ed. 99; National tion, § 69.

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amounting to spoliation.^ And most of the leaders of public opinion ignored the argument, that such an immunity amounted to no more than a fair allowance for the amount of customs duties and other internal revenue, far disproportionate to their incomes when compared with those of men of larger wealth, ■ which was paid through the increased prices of their purchases by those who were then exempted. It is noteworthy that of such four States, three - New York, 'New Jersey and Massachusetts - together with the State of Illinois, which ranks third in payments under the income tax of 1913, ratified the Sixteenth Amendment empowering Congress to levy such taxes without apportionment.

The normal, and strictly legal, method of testing the validity of the legislation would have been either by the payment of the tax under protest and a suit against the collector or the Government for its recovery, or else by resistance to its collection, followed by an action of trespass against the Marshall who made the levy. But the exercise of neither of these remedies could have resulted in a decision by the Supreme Court at Washington until after fifty millions of dollars in such taxes had been collected and expended by the Government. The ruinous consequences to the public finances of a decision

that would have compelled their return from the Treasury must in such a case have exercised a pressure in support of the validity of the statute that could have been resisted by few judicial minds. An injunction against the collection of the tax was forbidden by the Revised Statutes. The counsel in Pollock's case brought a suit by a stockholder against his company to enjoin the latter from the payment thereof. And to forestall the charge of an attempt to obtain a collusive decree after an inadequate defense, the defendant, whose interests were in sympathy with the plaintiff, retained an eminent advocate, one of the most accomplished rhetoricians of his generation, a man whose character made it impossible to doubt the sincerity of

B The author frankly admits that tion" § 69; but subsequent study- he then shared this economical opin- and reflection have convinced him of ion, which -was expressed by him in his error, his "Commentaries on the Constitu-

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' his opposition, but ■who was more distinguished for his talent than for his tact. As has been established by subsequent decisions, such a suit was within the prohibition of the Revised Statute; but this point was not raised by the nominal defendant. It was formally waived by the Attorney General so far as he had the power to make such a waiver.® And this.

'! was the reason assigned for its disregard by the Court.' The Department of Justice made no opposition to an advancement of the appeal so that it might be heard before the tax was payable, the right of intervention being granted to the 'Government after a summary decision against the plaintiff below. This gave the appellant a great tactical advantage, not only for the reason already stated, but because it left room for the suggestion, that the mind of the Attorney General was not convinced that all doubts as to the constitutionality of such taxation had been so dissipated by an unbroken line of legislation and decisions and by public acquiescence in the same that it would be an act of supererogation to reargue the questions thereby involved.' The position upon which the plaintiff first succeeded, namely, that so much of the tax as affected

I rents was a land tax, and consequently a direct tax, which must be invalid, irrespective of the validity of the tax upon the income from personal property, although briefly but fairly stated in the bill and the first brief filed at Washington,

I was first argued at length in a supplemental brief, filed a few days before the case was reached, and it was not discussed at

6 Pollock V. Farmers' Loan & which I take, and some more facts Trust Co., 157 U. S. 429, 554, 39 that I have not presented and which L. ed. 759, 809, 15 Sup. Ct. Rep. I do not propose to present." Sena-

673; per Fuller, J. tor William E. Borah, of IdaKo.

7 "I learn from one of the counsel May 3rd, 1909. Cong. Rec. 61st who presented the case upon the Cong., 1st. Sess., p. 1685.

part of the Government in the sec- 8 Edward B. Whitney, the As-
ond case that they did not in the sistant Attorney (Jeneral, subse-
first place deem it necessary to do quently a Justice of the Supreme
more than call the attention of the Court of the State of New York,
court to the fact that it did not who had charge of the case under
have jurisdiction of the case; that the Attorney General, protested in
they supposed it would be practical- the Department of Justice against
ly a self-evident proposition. I will the unqualified consent given to the
say that I am not speaking without advancement by one of his associates,
some facts to support the position

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the bar until the closing speech for the appellant, when there was no opportunity to reply to the same.* When the cause was heard, upon the oral argument the counsel for the nominal defendant made the mistake of using rhetorical language, which offended the Court. He said in his peroration :

"These suggestions are all the more weighty and important in those controversies which, like the present, are calculated to arouse the interests, the feelings - almost the passions - ■ of the people, form the subject of public discussion, array class against class, and become the turning points in our general elections. Upon such subjects every freeman believes that he has a right to form his own opinion, and to give effect to that opinion by his vote. Nothing could be more unwise and dangerous - nothing more foreign to the spirit of the Constitution - than an attempt to baffle and defeat a popular determination by a judgment in a lawsuit. When the opposing forces of sixty millions of people have become arrayed in hostile political ranks upon a question which all men feel is not a question of law, but of legislation, the only path of safety is to accept the voice of the majority as final. The American people can be trusted not to commit permanent injustice; nor has history yet recorded an instance in which governments have been destroyed by attempts of the many to lay undue burdens of taxation on the few. The teachings of history have all been in the other direction. But if an overwhelming majority, in an effort to accomplish what it believes to be

9 See Brief for United States up- settled by the Supreme Court, and on Petition for Rehearing, pp. 6-8. that the only question open for dis- "When the matter was tested the cussion was that of its uniformity, first suit that was brought to test the After he had made an investigation constitutionality of the income tax in the interest of his client, seeking was brought here in the District of for whatever ground he could fir»(Columbia. Ex-Senator Edmunds ap- to attack the law, he admitted by peared upon the part of those test- his brief that the authority which ing the validity of the law. I they now say was dicta followed by learned from one of the attorneys other cases had settled the question, who argued the case in favor of the so that it was not a debatable ques- law that, upon the first presentation tion in the Supreme Court." Sena- of the ease, ex-Senator Edmunds, tor William E. Borah, of Idalio, one of the greatest constitutional May 3rd, 1909. Cong. Ree. 61st. lawyers in the country, admitted by Cong., 1st. Sess., p. 1685. his brief that the question had been Foster Income Tax. - 3.

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justice, finds itself suddenly arrested in its course by another majority of a body of half a dozen or more who happen to hold different opinions upon substantially the same questions, but who assume to speak with a different authority, and to utter the voice of the law, the consequences can hardly fail to be disastrous to the stability of the law itself. Such a triumphant majority will find its way to the accomplishment of its ends over the ruins, it may be, of any constitution, or of any Court. We have had some experiences in our history of the futility of attempting to convert political into judicial questions, and the result has not added to the authority of this tribunal. It is the part of wisdom for a judicial body to avoid attempts at the solution of problems which must and will be finally settled in another forum." Chief Justice Fuller, was on the point of interrupting by a rebuke; when Mr. Justice Field turned to the Chief and remarked, "Rather bad taste." As the Chief Justice considered Judge Field to be more sensitive and quicker tempered than himself, he decided that if his associate considered the words nothing more than a breach of taste there was no cause

for interference.*" Mr. Choate in his exordium thus happily replied :

"If the court please. After Jupiter had thundered all around the sky, and had leveled everything and everybody by his prodigious bolts. Mercury came out from his hiding place and looked around to see how much damage had been done. He was quite familiar with the weapons of his learned Olympian friend; he had often felt their force, but he knew that it was largely stage thunder, manufactured for the particular occasion, and he went his round among the inhabitants of Olympus restoring the consciousness, and dispelling the fears, and raising the spirits both of gods and men who had been prostrated by the crash. It is in that spirit that I follow my distinguished friend; but I shall not undertake to cope with him by means of the same

10 The Chief Justice so informed the author, before the first decision Mrs. Fuller, who told the story to of the court.

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weapons, because I am not master of them. It never would have occurred to me to present either as an opening or closing argument to this great and learned Court, that if in your wisdom you found it necessary to protect a suitor who sought here to cling to the ark of the covenant and invoke the protection of the Constitution which was created for us all, it was an argument against your furnishing such relief and protection that possibly the popular wrath might sweep the Court away. It is the first time I have ever heard that argument presented to this or any other court, and I trust that it will be the last."- He pressed with great force the argument that more than, four-fifths of the tax would- be paid by citizens of four States,, whereas the representatives of those States were less than one-fourth of the members of the House of Representatives. This point, as appears by the opinion of the Chief Justice, had great influence with the Court.

Upon the first argument, the Court unanimously held that so much of the statute as imposed a tax upon the income of State municipal bonds was invalid. About this proposition, in view of the former decisions, there could be but little doubt. A majority, which consisted of the Chief Justice and the Associate Justices Field, Gray, Brewer, Brown and Ste-a e. held further that the tax upon rents was a direct tax and therefore invalid because not apportioned in accordance with the ordinance of the Constitution concerning direct taxation. Justices Harlan and White dissented upon this proposition. Mr. Justice Jackson was absent because of illness. The Court was equally divided upon the questions : "1, Whether the void provisions as to rents and income from real estate invalidated the whole Act ? 2, Whether as to the income from personal property as such, the Act is unconstitutional as laying direct taxes ?

3, Whether any part of the tax, if not considered as a direct tax, is invalid for want of uniformity on either of the grounds suggested ? " ^^

The opinion of the Court was delivered by Chief Justice

i^ Pollock V. Farmers' Loan d ed. 759, 821, 15 Sup. Ct. Rep. 67a: T. Co., 157 U. S. 429, 586, 39 L.

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Fuller. He said: "The men who framed and adopted that instrument had just emerged from the struggle for independence whose rallying cry had been that 'taxation and representation go together.'

"The mother country had taught the colonists, in the contests waged to establish that taxes could not be imposed by the sovereign except as they were granted by the representatives of the realm, that self-taxation constituted the main security against oppression. As Burke declared, in his speech on Conciliation with America, the defenders of the excellence of the English Constitution 'took infinite pains to inculcate, as a fundamental principle, that, in all monarchies, the people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or no shadow of liberty could subsist' The principle was that the consent of those who were expected to pay it was essential to the validity of any tax.

"The states were about, for all national purposes embraced in the Constitution, to become one, united under the same sovereign authority, and governed by the same laws. But as they still retained their jurisdiction over all persons and things within their territorial limits, except where surrendered to the general government or restrained by the Constitution, they were careful to see to it that taxation and representation should go together, so that the sovereignty reserved should not be impaired, and that when Congress, especially the House of Representatives, where it was specifically provided that all revenue bills must originate, voted a tax upon property, it should be with the consciousness, and under the responsibility, that in so doing the tax so voted would proportionately fall upon the immediate constituents of those who imposed it.

"More than this, by the Constitution the states not only gave to the nation the concurrent power to tax persons and property directly, but they surrendered their own power to levy taxes on imports and to regulate commerce. All the thirteen were seaboard states, but they varied in maritime importance, and differences existed between them in population, in wealth, in the character of property and of business interests. Moreover,

they looked forward to the coming of new states from the great west into the vast empire of their anticipations. So when the wealthier states as between themselves and their less favored associates, and all as between themselves and those who were to come, gave up for the common good the great sources of revenue derived through commerce, they did so in reliance on the protection afforded by restrictions on the grant of power." ^* He quoted from Madison's report of the debates in Federal convention: "Mr. King asked what was the precise meaning of direct taxation. No one answered." He then quoted remarks from Chancellor Livingston and Chief Justice Marshall in the State conventions of ratification, and Sedgwick in the debate upon the Carriage Act, in the House from the argument of Hamilton in the case of the Carriage Tax and the opinions of the Court therein, statements to the effect that a land and capitation tax were direct taxation. He then said: "From the foregoing it is apparent: 1. That the distinction between direct and indirect taxation was well understood by the framers of the Constitution and those who adopted it. 2. That under the state systems of taxation all taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes. 3. That the rules of apportionment and of uniformity were adopted in view of that distinction and those systems. 4. That whether the tax on carriages was direct or indirect was disputed, but the tax was sustained as a tax on the use and an excise. 5. That the original expectation was that the power of direct taxation would be exercised only in extraordinary exigencies, and down to August 15, 1894, this expectation has been realized. The Act of that date was passed in a time of profound peace, and if we assume that no special exigency called for unusual legislation, and that resort to this mode of taxation is to become an ordinary and usual means of supply, that fact furnishes an additional reason for circumspection and care in disposing of the case." ^' After distinguishing the previous decisions sustaining the income taxes during the Civil War showing that the validity thereof so

12 Ibid. 157 U. S. 556, 557. "Ibid. 157 U, S. 573, 574.

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far as they affected rents was not clearly raised upon the record of a tax in any of them, he then continued: "It is conceded in all these cases, from that of Hylton to that of Springer, that taxes on land are direct taxes, and in none of them is it determined that taxes on rents or income derived from land are not taxes on land.

"We admit that it may not unreasonably be said that logically, if taxes on the rents, issues and profits of real estate are equivalent to taxes on real estate, and are therefore direct taxes, taxes on the income of personal property as such are equivalent to taxes on such property, and therefore direct taxes. But we

are considering the rule stare decisis, and we must decline to hold ourselves bound to extend the scope of decisions – none of which discussed the question whether a tax on the income from personalty is equivalent to a tax on that personalty, but all of which held real estate liable to direct taxation only – so as to sustain a tax on the income of realty on the ground of being an excise or duty.

"As no capitation, or other direct tax was to be laid otherwise than in proportion to the population, some other direct tax than a capitation tax (and it might well enough be argued some other tax of the same kind as a capitation tax) must be referred to, and it has always been considered that a tax upon real estate £0 nomine or upon its owners in respect thereof is a direct tax within the meaning of the Constitution. But is there any distinction between the real estate itself or its owners in respect of it and the rents or income of the real estate coming to the owners as the natural and ordinary, incident of their ownership ?

"If the Constitution had provided that Congress should not levy any tax upon the real estate of any citizen of any state, could it be contended that Congress could put an annual tax for five or any other number of years upon the rent or income of the real estate ? And if, as the Constitution now reads, no unapportioned tax can be imposed upon real estate, can Congress without apportionment nevertheless impose taxes upon such real estate under the guise of an annual tax upon its rents or income ?

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"As according to the feudal law, the whole beneficial interest in the land consisted in the right to take the rents and profits, the general rule has always been, in the language of Coke, that ^if a man seized of land in fee by his deed granteth to another the profits of those lands, to have and to hold to him and his heirs, and maketh livery secundum formam chariw, the whole land itself doth pass. For what is the land but the profits thereof ? ' Co. Lit. 45. And that a devise of the rents and profits or of the income of lands passes the land itself both at law and in equity. 1 Jarm. Wills (5th ed.) *798 and cases cited.

"The requirement of the Constitution is that no direct tax shall be laid otherwise than by apportionment – the prohibition is not against direct taxes on land, from which the implication is sought to be drawn that indirect taxes on land would be constitutional, but it is against all direct taxes – and it is admitted that a tax on real estate is a direct tax. Unless, therefore, a

tax upon rents or income issuing out of lands is intrinsically so different from a tax on the land itself that it belongs to a wholly different class of taxes, such taxes must be regarded as falling within the same category as a tax on real estate *eo nomine*. The name of the tax is unimportant. The real question is, is there any basis upon which to rest the contention that real estate belongs to one of the two great classes of taxes, and the rent or income which is the incident of its ownership belongs to the other? We are unable to perceive any ground for the alleged distinction. An annual tax upon the annual value or annual user of real estate appears to us the same in substance as an annual tax on the real estate, which would be paid out of the rent or income. This law taxes the income received from land and the growth or produce of the land. Mr. Justice Paterson observed in *Hylton v. United States*, 3 Dall. 171, 1 L. ed. 556, 'land, independently of its produce, is of no value;' and certainly had no thought that direct taxes were confined to unproductive land.

"If it be true that by varying the form the substance may be changed, it is not easy to see that anything would remain of the limitations of the Constitution, or of the rule of taxation and representation, so carefully recognized and guarded in favor of

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the citizens of each state. But constitutional provisions cannot be thus evaded. It is the substance and not the form which controls as has indeed been established by repeated decisions of this court.

"Nothing can be clearer than what the Constitution intended to guard against was the exercise by the general government of the power of directly taxing persons and property within any state through a majority made up from the other states. It is true that the effect of requiring direct taxes to be apportioned among the states in proportion to their population is necessarily that the amount of taxes on the individual taxpayer in a state having the taxable subject-matter to a larger extent in proportion to its population than another state has, would be less than in such other state, but this inequality must be held to have been contemplated, and was manifestly designed to operate to restrain the exercise of the power of direct taxation to extraordinary emergencies, and to prevent an attack upon accumulated property by mere force of numbers.

"It is not doubted that property owners ought to contribute in just measure to the expenses of the government. As to the states and their municipalities, this is reached largely through the imposition of direct taxes. As to the Federal government, it is attained in part through excises and indirect taxes upon luxuries and consumption generally, to which direct taxation may be added to the extent the rule of apportionment allows. And through one mode or the other, the entire wealth of the country real and personal, may be made, as it should be, to con-

tribute to the common defense and general welfare.

"But the acceptance of the rule of apportionment was one of the compromises which made the adoption of the Constitution possible, and secured the creation of that dual form of government, so elastic and so strong, which has thus far survived in unabated vigor. If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the nation and the states of which it is composed, would have disappeared, and with it one of the bulwarks of private rights and private property.

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"We are of opinion that the law in question, so far as it levies a tax on the rents or income of real estate, is in violation of the Constitution, and is invalid." "

Both sides moved for a reargument. This, Mr. Justice Jackson left his death bed to attend. A majority of the court, Justices Harlan, White, Brown, and Jackson, dissenting, then adhered to the opinion that taxes on the rents or income of real estate were direct taxes. The same majority. Judge Shiras, who on the former hearing had voted to the contrary, now voting with them, '^ held further that taxes on personal property or on the income of personal property were likewise direct taxes, and that the invalidity of these parts of the tax invalidated the remainder since the statute constituted one entire system of taxation. ^^

Upon the reargument Mr. Justice Shiras, who had voted upon the former decision against the proposition that the pro-

14 Ibid. 157 U. S. 552, 583. the judges, who finally held the law

15 The official report does not state to be constitutional, was wavering how he voted upon the first decision ; in the first decision, this distinguished but that his vote was cast in favor of the validity of the statute was and implored him to stand by the published in the newspapers of the constitutionality of the law and day has never been contradicted, argued the case with him to sustain His classmate, Theodore Bacon, of the law; that on the second hearing the Rochester bar, told the writer Judge Shiras never gave this man that he, between the two decisions, nor the court to understand that he argued with Judge Shiras that the was himself being revolutionized or latter's position was unsound. The had been revolutionized; that the change . of the Judge's vote made court was as much astonished as him the target of much abuse in the country at his extraordinary the newspapers and in Congress, but somersault, and when he did do it this did not impair the esteem in he gave no evidence or reason, but which his character was held by quietly and without an opinion gave those who knew him. The following his voice for the overriding of the extract from a. speech made by Ben- very law which he had voted to sustain McMillin, of Tennessee, in the tain a few days before." (Cong.

House March 2nd, 1897, states a Eec, 2d Sess., 54th Cong., 2656.) fact not generally known, but the For defenses of Judge Shiras, see truth of which, so far as the pres- speeches in the House by Frank H. ent writer's researches have extend- Bartlett, of New York, Fby. 20, 1897 ed, has never been challenged: "If fCong. Eec, 2nd Sess., 54th Cong., the gentleman reaches to the hot- 2067), and John Dalzell, of Penn- tom of this case and gets at the real sylvania (Cong. Eec, 2d Sess., 54th fact, I will get him to come to me Cong., 2653) March 2nd, 1897. candidly or to the House candidly is Pollock v. Farmers' Loan cfe and say whether he has not found Trust Co. 158 U. S. 661, 39 L. ed. these to be the facts. When one of 1134, 15 Sup. Ct. Rep. 912.

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visions as to rents and income from real estate invalidated the I whole Act, asked the Attorney General whether the latter saw any distinction so far as the constitutionality of the statute ;Was concerned between a tax upon rents and one upon the in- Icome of personal property. Mr. Olney promptly replied that le did not. Had a strong argument been made in support of iuch distinction, it is not impossible that the vote of Judge Shiras would have been cast as it was before. It is not unlikely, lowever, that the Administration preferred to have the whole Act set aside rather than to have the same enforced, with a dis- jcrimination in favor of landowners.

The arguments then presented in support of the legislation are easily accessible. They may be found in the dissenting opinions contained in the reports together with the briefs and speeches of counsel therein summarized.^' The subsequent his- torical discussion by Professor Edwin E. A. Seligman, the reader may find it convenient to^have here included.

"The critical question in the convention was that of the basis of representation. The larger states naturally demanded a rep- resentation which should be proportioned either to wealth or to population, or to some similar criterion; the smaller states, on the other hand, held out strongly in favor of equal repre- sentation. The first contest took place over the representation in the upper House. * * * The real fight came not over West and East, but over in'orth and South. The committee of five recommended the apportionment in the first legislature of twenty-six members to the South and thirty members to the North. This recommendation was referred back to another committee composed of one representative from each state, and

the report of this committee on July 10 changed the numbers to thirty-five to the North as against thirty to the South. After vain efforts on the part of the southern states to increase their numbers, the recommendation was adopted. Then arose the question of future representation. According to the report of the committee of five, the matter was to be left in the hands of

IT The most complete abstract is 1119) which is much more full contained in the Lawyers Edition than that in the official reports (157 Annotated (39 L. ed. 763-809, 1109- U. S. 442-553, 158 U S. 602-617).

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the legislature. But as a majority of the legislature had now been decided to consist of northern members, the North would have the whip-hand. Randolph accordingly proposed an amendment whereby the legislature should 'cause a proper census

and estimate to be taken once in every term of years.'

This, however, failed of adoption. On July 11 Williamson, of North Carolina, introduced a substitute motion providing that a periodical census should be taken of the free inhabitants of each state, 'and three-fifths of the inhabitants of other description,' and that representation should be apportioned accordingly. The three-fifths clause was thus again brought to the attention of the convention, and was attacked by the radicals, both northern and southern. For the extreme southerners now wanted to have all the slaves counted equally with the whites, and the extreme northerners were equally insistent upon having none of the slaves counted. Through a combination of these radicals, both North and South, Williamson's resolution was voted down, and the convention seemed to have arrived at a dead-lock.

"It was at this juncture that, on the morning of July 12, when the whole fate of the convention appeared to hang upon the decision as to the representation of slaves, Gouverneur Morris introduced his famous motion to add to the clause empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso 'that taxation shall be in proportion to representation.' This was an entirely new suggestion, although the proposition in its reverse form - that representation should be proportioned to taxation - had occasionally been advanced, both in the Continental Congress and in the convention. The aim of Morris was to overcome the objections of the extremists, on both sides. He hoped that the southerners might be induced to accept the three-fifths proposition, rather than to insist upon full representation, because it would then proportionately diminish their quota of contribution; and that, on the other hand, it would appeal to the extremists of the North, on the ground that if the three-fifths clause passed, the South would have to pay something, at all events, for their slaves. As Madison puts it: 'The

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object was to lessen the eagerness on one side for, and the opposition on the other side to, the share of representation claimed by the southern states on account of the negroes.' Morris himself, who was a strong nationalist, and not disposed to restrict the powers of the new government in any way, stated subsequently that he had 'only meant the clause as a bridge to assist us over a certain gulf.'

"It was, however, at once pointed out by Mason, who admitted the justice of the principle, that the clause was badly worded, in that it might drive Congress to resort to the discredited plan of requisitions. Morris, who thereupon conceded that his motion was open to these objections, 'supposed they would be removed by restraining the rule to direct taxation,' and added: 'With regard to indirect taxes on exports and imports, and on consumption, the rule would be inapplicable.' Wilson as well as Pinckney approved of the suggestion, and Morris, having varied his motion by inserting the word 'direct,' the convention unanimously accepted it so that it read 'provided always that direct taxation ought to be proportioned to representation.'

"From this recital of the facts two points are clear. First, the introduction of the words 'direct taxes' had no reference to any dispute over tax matters, but was designed solely to solve the difficulty connected with representation ; and secondly, direct taxation, according to Morris's motion, was to be proportioned, not to population alone, but to wealth as well as population.

"After the adoption of the amendment, the southerners desired to have the matter more precisely determined. Pinckney stated that he wanted the rule of wealth to be ascertained, and not left to the pleasure of the legislature. Randolph lamented that such a species of property as slaves existed ; but inasmuch as it did exist, the holders of it would require this security. He thereupon made a motion which, after a slight amendment by Wilson, was adopted by the convention. This made Morris's clause read as follows: 'Provided always that the representation ought to be proportioned according to direct taxation ; and in order to ascertain the alterations in the direct taxation which may be required from time to time by the changes in the re) a-

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-tive circumstances of the states, Resolved that a census be taken within two ye&frs from the first meeting of the legislature of the United States, and once within the term of every - years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th of April, 1783, and that the legislature of the United States shall apportion the direct taxation

accordingly.' The ratio referred to, it will be remembered, was that of counting a negro as three-fifths of a freeman.

"On the next day final action was taken. The original proposition, it must not be forgotten, had been to regulate representation according to wealth and numbers. In the meantime that convention had just adopted Eandolph's resolution that representation should be proportioned to direct taxation, and that direct taxation should be proportioned to population. Randolph therefore now moved that the original motion be amended by striking out the word 'wealth.' Gouverneur Morris objected strongly to the amendment, but it was adopted by an almost unanimous vote. Thus the matter was settled that representation should be proportioned to direct taxation, and that direct taxation should be proportioned to population, counting a negro as three-fifths of a freeman. On July 16, the report of the grand committee, which contained this amendment, was adopted by

a bare majority, and thus the great compromise was effected.

* * *

"The term 'direct tax' is used in one other clause of the Constitution, where it is put in connection with the capitation tax. On August 6 the committee on detail reported a resolution that 'no capitation tax shall be laid unless in proportion to the census hereinbefore provided to be taken.' This originated in the contest over the slave-trade and the possible import duty on slaves. The southerners evidently feared that Congress, with its northern majority, might decide to make an arbitrary computation of population, and thus saddle the south with an undue share of taxation through a tax on slaves. It was in order to prevent this that the capitation clause was introduced. It awakened no objection at all, since it was practically a confirmation of the compromise that had been adopted, and it came before the con-

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vention for final vote on September 14. In the meantime various suggestions had been made looking toward the securing from the delinquent states payment of the old requisitions for which they had been liable under the Confederacy. Reade, of Delaware, in order to obviate this, or to use his own words, in order to prevent the attempt 'to saddle the states with the readjustment by this rule of past requisitions of Congress,' moved that the words 'Or other direct tax' be inserted after the word 'capitation.' He maintained 'that his amendment, by giving another cast to the meaning, would take away the pretext,' and his motion was adopted without any discussion. * * *

"From the above review of the origin of the direct-tax clause it is clear that it was due simply and solely to the attempt to solve the difficulty connected with the maintenance of slavery. But for that struggle Gouverneur Morris would never have introduced the term 'direct tax,' and there would have been no reason to introduce it anywhere else. * * *

"In the light of actual history, as it has been explained above, all these statements must be characterized as essentially erroneous. It is true that when the Constitution was submitted to the different states for ratification, some jealousy of the powers granted to Congress was in a few instances manifested. But there was no difficulty in overcoming this objection. In the convention itself, however, which framed the Constitution, there was no trace of any such conflict in connection with the taxation clause, just as we have seen that there was no effort and no disposition on the part of the convention to restrict the general tax powers of the government. The states did not even question the advisability of abandoning their rights to impose import duties, and every one agreed that the old system of requisitions must be done away with. There was no jealousy of large states on the part of small states that manifested itself at all in the discussion over the tax provisions; the sporadic allusions to the future development of the western states were found, as we have seen, only in the discussion of the original clauses affecting representation, and they played no role at all in the tax discussion. The introduction of the words 'direct tax' in the phrase 'no capitation or other direct tax' had, as we

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know, nothing whatever to do with the compromise of which Mr. Choate and the court speak. Far from being a question of the small states against the large states, or of the seaboard states against the western states, or of the states in general against the Federal government, the compromise was due solely to an effort of the slave states to protect the three-fifths rule.

"That the Supreme Court of the United States was misled by the counsel into an historical interpretation which is beyond all doubt erroneous, is deplorable." ''

§ 20. Constitutional objections to progressive taxation. It seems that objections to the validity of the statute because it imposes progressive taxation levying an additional tax upon incomes in excess of \$20,000, which is gradually increased from one to six per centum as the income exceeds specified amounts, cannot be sustained. Progressive taxation has been severely criticised by many statesmen and economists. ^ The

18 Seligman's Income Tax, pp. 548, 549-553, 554-555, 556, 557-58. See also the speech of Senator Borah May 3 and 4, 3909, Cong. Record 61st. Cong. 1st. Sess. 1682-1699.

§ 20. 1 There is some dispute as to whether Solon imposed a progressive tax upon the produce of land. Boeckh Public Economy of the Athenians, Am. Ed., Book IV, Ch. V. Seligman Progressive Taxation, 2d ed., p. 11. But a progressive Income Tax proportioned as to classes seems to have prevailed in Athens (B. C. 380) when Nausinicus was Archon. Hildebrand Jahrbücher für National-Oekonomie und Statistik, viii, 453 et seq. Seligman Progressive Taxation, 12. M. G. Platon La Démocratie et le Régime Fiscal à Athènes, à Rome et de nos Jours, pp. 210-211; Boeckh's Public Economy of the Athenians, 669; Parieu's Traits des Impôts, i, 416. Seligman Progressive Taxation, 13. Progression is also found in some of the taxes during the middle ages, which were proportioned upon both property and income. Seligman Progressive Taxation, 15, 16. A graduated Poll Tax appears in the middle ages,

but it was graduated in accordance* with the class to which the individual belonged, instead of with the amount of property that he owned. Seligman Income Tax, 6. In Florence, in 1443, the progressive rate was first applied to the tax upon income known as the decima graziosa, and, in 1480, to the Scala, a tax upon rents. (Supra, § 1.)

During the early part of the eighteenth century, progressive income taxation is also found in Holland and Saxony. Seligman, Progressive Taxation, 2d ed. 26. During the French Revolution, in 1793, the Convention levied a progressive tax upon the incomes of those in excess of 1,000 livres for each mem-

ber of the family, which confiscated the entire surplus over 9,000 livres. (Gomel, Histoire Financière de la Legislative et de la Convention, i, (1902), 114-121, Seligman, Progressive Taxation, 30.) Under the Directorate, progressive taxation in the form of forced loans was levied twice in 1795 and 1798. Neither of these, however, was successful in raising much revenue. In 1796, in Holland, a progressive income tax was levied which for a year varied

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from 3 to 37 per cent., in proportion to the income. In Austria, a progressive class tax was imposed in result was, in many instances, gross oppression. A brewer in Georgia with the rates varying from 20 to 30 per cent. had invested fifty dollars and made twenty dollars within the year, his tax was assessed at twenty dollars. (Parieu, Histoire des Impôts généraux sur la Propriété et le Revenu, 152-154. Cf. also his Traité des Impôts, i, pp. 442 et seq.) Seligman, Progressive Taxation, 2d ed. 38, 39.) he owned, the tax collector replied, "Very well, give me all you have introduced in the United States by and I will take a note for the rest." the War Income Tax. The Act (Southern Watchman, June 17, 1863, of July 1, 1862, increased the tax quoted in Seligman, Progressive Taxation, 2d ed., p. 105, note.) from three to five per cent, when the income exceeded \$10,000. 12 When Turgot was offered a project of progressive taxation, he wrote on Stat, at L. 432, § 90, quoted infra. the margin: "Il faut exécuter l'auteur, et non le projet." The author,

raised the tax to five per cent, on not the project, should be executed, incomes between \$600 and \$5,000, Paul Leroy-Beaulieu said: "L'impôt imposed a duty of ten per cent, on progressit a pour mfire I'envie et the excess over \$5,000. Act of pour fille I'oppression." (Traiti March 3. :865, § 1, 13 Stat, at L. d'Economie Politique, 2nd ed., 1896, 469, 479. The Act of March 2, 1867, iv, p. 764.) The mother of the pro-repealed all graduation upon in- gressive tax is envy and her daugh- comes in excess of \$1,000, below ter oppression. These and othei which sum there was an exemption, criticisms are quoted and cited in Act of March 2, 1867, § 13, 14 Seligman's Progressive Taxation, pp. Stat, at L. 471, 477. There was no 141, 142, and passim. other graduated taxation of incomes Lecky "Democracy and Liberty," by the United States before the Act Vol. 1, p. 286, et seq: "It is ob- of October 3, 1913, although a grad- vious that a graduated tax is a. di- uated tax upon legacies was con- rect penalty imposed on saving tained in the Act of July 6, 1797, and industry, a direct premium of- 2 Stat, at L. 148, chap. 17; Act of fered to idleness and extravagance. July 1, 1862, chap. 119, §§ 1, 2, ■* * * It is at the same time per- 12 Stat, at L. 433, 485 (U. S. Comp. fectly arbitrary. When the princi- Stat. 1901, p. 2040), and the Ware pie of taxing all fortunes on the Revenue Act of June 13, 1898, chap, same rate of computation is aban- 448, §§ 29, 30, 30 Stat, at L. doned, no definite rule or principle 448 (U. S. Comp. Stat. 1901, p. remains. At what point the higher 2286). scale is to begin, or to what degree

In England, there is no progres- it is to be raised, depends wholly sive graduated income tax, although on the policy of Governments and a super-tax is imposed upon incomes the balance of parties. The ascend- in excess of £5,000, with a slight ing scale may at first be very mod- progression in the taxation of in- crate, but it may at any time, when comes below that sum. 10Edw. VII, c. fresh taxes are required, be made 8, pt. IV. A progressive graduated more severe, till it reaches or ap- income tax exists in most countries proaches the point of confiscation, in Europe. See Seligman, Progres- No fixed line or amount of gradua- siii-e Taxation, passim, supra, § 13. tion can be maintained upon princi-

During the Civil War, Progressive pie, or with any chance of finality.

Income Taxes were imposed in North The whole matter will depend upon

Carolina (N. C. L. of 1861) Georgia the interests and wishes of the clec-

(Laws of 1863, Extra Sess., Title tors; upon party politicians seeking

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for a cry and competing for the votes of very poor and very ignorant men. Under such a system all large properties may easily be made unsafe, and an insecurity may arise which will be fatal to all great financial undertakings. The most serious restraint on parliamentary extravagance will, at the same time, be taken away, and majorities will be invested with the easiest and most powerful instrument of oppression. Highly graduated taxation realizes most completely the supreme danger of democracy, creating a state of things in which one class imposes on another burdens which it is not asked to share, and impels the State into vast schemes of extravagance, under the belief that the whole cost will be thrown upon others. The belief is, no doubt, very fallacious, but it is very natural, and it lends itself most easily to the claptrap of dishonest politicians. Such men will have no difficulty in drawing impressive contrasts between the luxury of the rich and the necessities of the poor, and in persuading ignorant men that there can be no harm in throwing great burdens of exceptional taxation on a few men, who will still remain immeasurably richer than themselves. Yet no truth of political economy is more certain than that a heavy taxation of capital, which starves industry and employment, will fall most severely on the poor. Graduated taxation, if it is excessive or frequently raised, is inevitably largely drawn from capital. It discourages its accumulation. It produces an insecurity which is fatal to its stability, and it is certain to drive great masses of it to other lands."

McCulloch on "Taxation" (London, 1845), pp. 140, 141, et seq. "It is argued that, in order fairly to proportion the tax to the ability of the contributors, such a graduated scale of duty should be adopted as should press lightly on the smaller class of properties and incomes, and increase according as they become

larger and more able to bear taxation. We take leave, however, to Foster Income Tax. — 4.

protest against this proposal, which is not more seductive than it is unjust and dangerous. * * * If it either pass entirely over some classes, or press on some less heavily than on others, it is unjustly imposed. Government, in such a case, has plainly stepped out of its proper province, and has assessed the tax, not for the legitimate purpose of appropriating a certain proportion of the revenues of its subjects to the public exigencies, but that it might at the same time regulate the incomes of the contributors; that is, that it might depress one class and elevate another. The toleration of such a principle would necessarily lead to every species of abuse. That equal taxes on property or income will be more severely felt by the poorer than by the richer classes is undeniable; but the same is true of every imposition which does not subvert the subsisting relations among the different orders of society. * * * Let it not be supposed that the principle of graduation may be carried a certain extent, and then stopped. — * * * In such matters the maxim of ohsta prindpilt should be firmly adhered to by every prudent and honest statesman. Graduation is not an evil to be paltered with. Adopt it and you will effectually paralyze industry and check accumulation; at the same time that every man who has any property will hasten, by carrying it out of the country, to protect it from confiscation. The savages described by Montesquieu, who to get at the fruit cut down the tree, are about as good financiers as the advocates of this sort of taxes. Wherever they are introduced security is at an end. Even if taxes on income were otherwise the most unexceptionable, the adoption of the principle of graduation would make them about the very worst that

could be devised. The moment you abandon, in the framing of such taxes, the cardinal principle of exacting from all individuals the same proportion of their income or of their property, you are at sea

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without rudder or compass, and there is no amount of injustice and folly you may not commit."

Bastable "Public Finance" (1895), pp. 292, 293, 294, 555. "It is entirely arbitrary. The possible scales are infinite in number, and no simple and intelligible reason can be assigned for the selection of one in preference to its competitors. * * * There is no self-acting principle by which to determine the scale of progression. * * * All depends on the will of the legislature, i. e. in most modern societies, on the votes of persons who will not directly feel the charges placed on the higher incomes and will probably believe that they will be gainers by them." "But behind any actual scale or progression lies the unavoidable danger of arbitrary extension in the future. There is as yet no limiting principle discovered which will determine up to what point progressive death-duties shall be carried, and at which their advance should cease. Appeals to the supposed natural rights of owners, or to the equally imaginary rights of the State, can supply no solution of this problem."

Leroy-Beaulieu "Traits d'Economie Politique" (1896), vol. IV, pp. 750, 764. "L'impôt progressif constitue une véritable spoliation. Il viole de plus la règle, établie par toute la civilisation, que l'impôt doit être librement consenti par le contribua-

ble: car, il est bien clair que, dans ce cas, c'est la masse des contribuables qui rejette le gros poids de l'impôt sur quelques-uns, et que ceux-ci ne consentent pas, même tacitement, à la surcharge dont on veut les grever. Quand le taux de l'impôt est égal pour tous, on peut considérer que le vote de l'impôt par les Chambres comporte un acquiescement implicite de tous les contribuables; autrement, non. ♦ • * Tout système d'impôt progressif, si attentif qu'il soit, est inique et dangereux."

Leroy-Beaulieu "Science des Finances," vol. I, pp. 139, 140. "Ainsi, la théorie de l'impôt progressif n'est pas rationnelle; elle ne sort pas d'une analyse exacte des faits so-

ciaux; elle est superficielle; elle n'est pas une doctrine scientifique.. Cette théorie est en outre dangereuse, parce que, partant du principe de l'égalité* de sacrifice, elle a une tendance invincible à vouloir corriger les inégalités sociales; il y a infl. un. entraînement qui est fatal."

Paul Beauregard "Elements d'Economie Politique," p. 313. "Ce système, encore préconisé aujourd'hui dans certains milieux, a séduit jadis de grands penseurs comme Montesquieu et J.-B. Say. Il présente pourtant aux critiques les plus graves.. Il est injuste, car il ne proportionne pas la charge au bénéfice obtenu et rejette sur les uns les dépenses qui doivent profiter aux autres: inconvenient particulièrement grave dans un pays de suffrage universel, où les dépenses publiques sont votées par des députés nommés par tous les citoyens. Il est dangereux, car, absorbant une forte portion des gros revenus, il tend à décourager l'esprit d'entreprise et le goût de l'épargne. Enfin il est arbitraire, car on ne peut déterminer rationnellement la progression susceptible d'égaliser les charges imposées à chacun."

Eene Stourm "Dictionnaire d'Economie Politique" vol. II, p. 21.
"D'une part, la progression, livree a elle-m6me, aboutit plus ou moins a la spoliation. D'autre part, si les gouvernements veulent corriger le jeu-excessif de son mecanisme spontane, l'arbitraire deviant la seule r6gle.. Spoliation ou arbitraire, tels seraient done les derniers mots de l'impOt. progressif."

Ibid. pp. 24, 25. "Telles sont done les consequences possibles du systfime progressif: nivellement des fortunes, abolition des heritages, en un mot, spoliation arbitraire s'abritant derriere un tarif fiscal. * » * Sous, la Revolution, les emprunts forces et progressifs absorbferent la totalite des revenus qualifies de superflu;. ils. prirent 50 p. 100 des revenus abondants et 100 p. 100 des revenus superflus. Renouveles a trois reprises-differentes, en 1793, 1795 et 1799,. ces emprunts progressifs provoqu6- rent tant de recriminations, d'injustices et de souS'rance ^u'on attribua.

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en grande partie, au dernier d'entre great want and destitution. Equality la recrudescence de mficontente- ty and manhood therefore demand ment public qui pr6c6da le coup and require uniformity of burden in d'Etat du 18 Brumaire. Ce sont la whatever is the subject of taxation." les dangers extremes qui, a juste See also argument of W. D. Guthrie titre, font reculer devant l'appliance before Governor Black of N. Y. tion, m?ma mvxlerfie, du principe de against Dudley Bill May 6, 1897. la progression." Professor Edwin R. Seligman says :

"To tax the larger incomes at a "While progression of some sort is higher percentage than the smaller, demanded from the standpoint of is to lay a tax on industry and earn- ideal justice, the practical difficul- ing; to impose a penalty on people ties in the way of its general appli- for having worked harder and saved cation are well nigh insuperable, more than their neighbors. It is Progression is defensible only on the partial taxation, which is a mild theory that the taxes are so ar- form of robbery. A just and wise ranged as to strike every individual legislation would scrupulously ab- on his real income. In default of stain from opposing obstacles to the a single tax on incomes, however, acquisition of even the largest for- which is visionary, practicable tax tune by honest exertions. Its im- systems can reach individual in- partiality between competitors would conies only in an exceedingly rough consist in endeavoring that they and round-about way. Under such should all start fair, not that, practical conditions it is doubtful

whether they were swift or slow, whether greater individual justice they should all reach the goal at will be attained by a system of pro-
once." Mill's Political Economy, II, gression than by the simple rule of
Book, II, Sec. 3. proportion; and it is highly ques-

David A. Wells "The Communism tionable whether the ideal advan-
of a Discriminating Income Tax," tages of progression would not be
North American Review, GXXX, outweighed by its practical short-
236, 239. "If it were proposed to comings. For the United States at
levy a tax of five per cent, on an- all events, the only important tax to
nual incomes below \$2,000 in which the progressive scale is at all
amount, and to exempt all incomes applicable at present is the inherit-
above that sum, the unequal and ance tax. For the future develop-
discriminating character of the tax ment of the idea we must rely on
would be at once apparent; and yet an improvement in the tax adminis-
an income tax exempting all incomes tration, on a more harmonious meth-
below \$2,000 is equally unjust and od of correlating the public revenues
discriminating. In either case the and on a decided growth in the
exemption cannot be founded or de- alacrity of individuals to contribute
fended on any sound principles of their due share to the common bur-
free constitutional government. It dens." Progressive Taxation, 2nd
is a simple manifestation of tyrann- ed., p. 324. See Max West, Inheri-
nieal power, under whatever form of tance Tax, Columbia College, 1893,
government it may be enforced." pp. 124-132.

Ihid. 245, 246. "It is a vital and On the other hand, Progressive
constitutional question, demanding Taxation has been defended by
absolute equality that is here in- Thomas Payne, Rights of Man,
volved and at stake. Any exemp- 1791; by Adolf Wagner, Finanzwis-
tions whatever, small or great, ex- senschaft, Vol. ii, 1880, 2nd ed. 1890 ;
cept to the absolutely indigent, is by Francis A. Walker, Political
purely arbitrary; and the principle, Economy, 1st ed. 1883, pp. 479-480;
once allowed, may obviously be car- by W. W. Marshall, The Industrial
ried to any extent. Any exemption Band Book, Garden City, 1888, Gu-
of any portion of the same class of mulative Taxation, Winfield, Kan.,
property or incomes is an act of 1890, The Tax Solution, Berlin, Pa.,
charity which every American ought 1893, The Graduated Tax Payer, vol.
to reject upon principle and with I, no. 1, to vol. Ill, no. 2, Berlin,
scorn, except under circumstances of Pa., 1895-1897, Industrial Charts

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Supreme Court of the United States, however, has sustained
progressive inheritance taxes, both State^ and Federal.^ In
the latter case the court said: "The review which we have
made exhibits the fact that taxes imposed with reference to the
ability of the person upon whom the burden is placed to bear
the same have been levied from the foundation of the govern-
ment. So, also some authoritative thinkers, and a number of
economic writers, contend that a progressive tax is more just
and equal than a proportional one. In the absence of consti-
tutional limitation, the question whether it is or is not is legis-
lative and not judicial. The grave consequences which it is
asserted must arise in the future if the right to levy a progres-
sive tax be recognized involves in its ultimate aspect the mere

assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise, where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or other form of tax, it will be time enough to consider whether the judicial power can

Shoioing at a Hingle Glance the Bad ers, contend that a progressive tax Effects of Monopolistic Over-Profit- is more just and equal than a pro- ing, the Prevention of the Same, and portional one. In the absence of con- the Good Results to Follow, Berlin, stitutional limitation, the question Pa., 1805, Deprofitization, Chicago, whether it is or is not is legislative 1899: and by Lieutenant-Governor and not judicial. The grave conse- Percy Danial, The Sunflower Tangle quences which it is asserted must over Problems of Taxation, Girard, arise in the future if the right to Kan., 1894, A Crisis for the Bus- levy a progressive tax be recognized bondman tcith Supplement contain- involves in its ultimate aspect the ing Graduated Taw Bill, Girard Kan., mere assertion that free and repre- 1889, A Lesson of To-day and a ques- sentative government is a failure." tion of To-morrow, Girard, Kan., Mr. Wayne McVeagh quotes this and 1892; and by a number of French says: "Capitalists exhibit a singu- and other continental economists, lar stupidity in resisting every at- See Dufay, L'Impot Progressif en tempt to impose upon them their France, 1904; J. W. von der Lith, proper share of the public burdens." iVeue voUstdndig ericiesene Abhand- North American Review, CLXXXII lung von den Steuern, 1766, sec. .S6; p. 825. von ScheeL Die progressi'e Besteue- Non nobis tantas componere lites. rung, and others. 'They are well col- ^ Magoun v. Illinois Trust & Sav. lected in Seligman's Progressive Bank, 170 U. S. 283, 42 L. ed. 10.37' Taxation, passim. 18 Sup. Ct. Rep. 594; Nunnemacher The present Chief Justice of the v. State, 129 Wis. 390, 9 L.R.A. (N. United States in Knowlton v. Moore, S.) 121, 108 N. W. 627, 9 Ann Cas'

178 U. S. 41, 109, 110, 44 L. ed. 969, 711.

996, 997, 20 Sup. Ct. Rep. 747, said: ^ Knowlton v. Moore, 178 U. S. 41,

"So, also some authoritative think- 44 L. ed. 969, 20 Sup. Ct. Rep. 747. ers, and a number of economic writ-

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afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so." * The supreme court of Wisconsin has sustained a progressive income tax.^

§ 21. Objections to the constitutionality of the income tax on account of the small numbers of persons affected by it. An objection to the validity of the income tax may be raised because its burden is confined to persons having an income of above \$3,000. It thus excludes from its incidence a large portion of the population of the United States, and is in effect class legislation confined to those who, if not conceded to be wealthy, must at least be admitted to be well-to-do. It may consequently be contended that the tax is a violation of that provision of the Constitution which requires that "all Duties, Imposts, and Excises shall be uniform throughout the United States ; " ^ and also to the Fifth Amendment, which provides that no person shall "be deprived of life, liberty, or property without due process of law ; nor shall private property be taken for public use without just compensation." The claim is further made that it denies the persons taxed "the equal protection of the laws." But that language is to be found only in the Fourteenth Amendment, which is a limitation upon the powers of the States alone.

§ 22. Uniformity of taxation required by the Constitution. The Constitution provides that "all duties, imposts, and excises shall be uniform throughout the United States." ^ This provision was not contained in the report to the Federal Convention of the Committee of Detail. In the subsequent discussion in the Convention of the clause granting Congress the power of taxation, McHenry of Maryland and General Pinckney of South Carolina submitted a proposition which gave to the Congress no power to fix ports of entry, except where the State legislature had refused to act upon the subject and re-

ilUd. 178 U. S. 41, 109, 110, L. ed. 400, 34 Sup. Ct. Rep. 272,

44 L. ed. 969, 996, 997, 20 Sup. Ct. printed in full infra, Part V.

Eep. 747. § 21. 1 Constitution, Article I,

5 State ex rel. Bolens v. Frear, 148 § 8.

Wis. 456, 134 N. W. 673, 135 N. W. § 22. 1 Constitution, Article I,

164, Ann. Cas. 191 3A, 1147, writ § 8. See supra, § 7.
of error dismissed 231 U. S. 616, 58

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quired that "all duties, imposts and excises, prohibitions and restraints, laid or made by the Legislature of the United States shall be uniform and equal throughout the United States."

These with other propositions were referred to a committee composed of a member from each state.* A few days later the committee reported a recommendation of the following clause:

■"Nor shall any regulation of salaries or revenues give preference to the ports of one state over those of another, or oblige vessels bound to or from any state to enter, clear, or pay duties in another, and all tonnage, duties, imposts and excises laid by the Legislature shall be uniform throughout the United States." '

In the discussion upon this recommendation the word "tonnage" was stricken out as comprehended in "duties." * "On the question on the clause of the report . . . (and all duties, imposts, and excises, laid by the Legislature, shall be uniform throughout the United States), it was agreed to nem. con." Subsequently, the clause now under consideration was by common consent annexed to the clause concerning the power of taxation with the word "and" changed to "but." *

The uniformity in duties, imposts, and excises must exist throughout the whole territory of the United States, including the Territories and the District of Columbia; while in the apportionment of direct taxes Congress has discretion to relieve the Territories or the District of Columbia from such taxation.®

It has been said that uniformity of taxation means an equal share in the burdens of the same, and includes not only uniformity in the rate of percentage, but also in the mode of assessment prescribed by law.^ A tax is uniform under the Constitution of the United States, when it operates with the same force and ef-

' Madison Papers, Elliott's De- 6 Loughborough v. Blake, 5 Wheat, bates, 2d ed. vol. V., p. 479. 317, 5 L. ed. 98.

3 Hid, p. 483. '' Railroad Tax Cases {County of

•4 Madison Papers, Elliott's De- Santa Clwra v. Southern Pacific R. bates, 2d ed. vol. V., p. 503. In the R. Co.) 9 Sawy. 165, 18 Fed. 385; printed journal. New Hampshire County of San Mateo v. Southern and South Carolina entered in the Pacific R. R. Co. 8 Sawy. 281, 13 negative. Madison states that their Fed. 147; County of San Mateo v.

opposition was confined to the clause Southern Pac. R. R. Co. 8 Sawy. 238, which forbade Congress to oblige 13 Fed. 722, 735; Exchange Bank of vessels to enter, clear, or pay duties Columbus v. Hines, 3 Ohio St. 1, 14; in another state than that to or Inhabitants of Cheshire v. County from which they were bound. Ibid, Gommissioners, 118 Mass. 386, 28 p. 503. L. ed. 798, 802, 5 Sup. Ct. Eep. 247.

6 Ibid., p. 543.

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feet in every place where the subject of it is found.' There are, however, dicta in judicial opinions which intimate that this constitutional provision prevents discrimination against individuals as well as against localities.'

A tax is uniform which operates with uniformity upon all persons of the same class, engaged in the same trade, or owners •of the same property." It has been held that uniformity of taxation exists, although persons holding less than a specified small amount of the property affected are exempted from its operation.^ ^ Thus, a tax on a bank of all deposits under a specified sum was held uniform. The court there, however, laid stress upon the fact that the tax was in name a tax on the bank and not ■on the depositors. '''

§ 23. Invalidation of the tax by the exemptions. A more ■serious objection arises under the claim that the new law is in

8 Head Money Cases, 112 U. S. 580, 594, per Mr. Justice Miller: "The uniformity here described has reference to the various localities in which the tax is intended to operate. 'It shall be uniform throughout the United States.' Is the tax on tobacco void, because in many of the states no tobacco is raised or

manufactured? Is the tax on distilled spirits void, because a few states pay three-fourths of the revenue arising from it! The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this, by ocean navigation, is uniform, and operates precisely alike in every port of the United States where such passengers can be landed." So held also in *Enowlton v. Moore*, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

9 *Gary v. Curtis*, 3 How. 236, 242, 245, 11 L. ed. 576, 579, 581 ; *G&rman Company Bank v. Archbald*, 15 Blatchf. 398, Fed. Cas. No. 5,364; *Vndted States v. Singer*, 15 Wall. 111, 121, 21 L. ed. 49, 51. "In the case of the income tax enacted during the war period, seven states in the year 1869 — Massachusetts, New

York, New Jersey, Pennsylvania, Ohio, Illinois and California — possessed forty per cent of the assessed property of the United States, and had just about forty per cent of the population. But at the same time these same seven states had fully three-fourths of the entire income tax levied by the Federal Government upon the entire country; or, to put it differently, the states which had sixty per cent of wealth and population of the country paid only about one-fourth of the entire tax." Is the Existing Income Tax Law Institutional ? by David A. Wells. The Forum, January, 1895, p. 541. An ingenious argument that the exemption of agricultural stock or produce consumed by the family of the producer made a law not uniform and so not constitutional, is made by Amasa J. Parker, Jr., in 50 Alb. L. J. 421.

iOHead Money Gases, 112 U. S.

580, 584, 28 L. ed. 798, 800, 5 Sup. Ct. Hep. 247.

11 German Savings Bank v. Archhald, 15 Blatchf. 398, Fed. Cas. No. 5,364. See City of Ifew Orleans v. Fourchy, 30 La. Ann. 910, quoted infra, § 8, note 26.

1* Oerm^m Savings Bank v. Archbald, 15 Blatchf. 398, 401, Fed. Cas. No. 5,364.

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effect not a tax upon the persons whom it seeks to subject to its operation, but a confiscation of their property. The denomination of a levy as a tax does not make it such.' Thus, it has been held that a levy of money by a state, although equally assessed,, is not a tax when its proceeds are devoted to private and to public purposes.^ It has been held also to be an equally essential attribute of a tax that its burden be equally apportioned among the persons or the property which are subjected to it. The Supreme Court of New Jersey said :

"Taxation operates upon a community, or a class in a community, according to some rule of apportionment. When the amount levied upon individuals is determined without regard to the amount or value exacted from any other individual or classes of individuals, the power exercised is not that of taxation, but of eminent domain. A tax upon the persons or property of A., B., and C. individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons, or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation, and not of taxation." ^

So, the Supreme Court of Kentucky said, speaking through Chief -Justice Robehtson : "An exact equalization of the burden of taxation is unattainable and Utopian. But still there are well-defined limits within which the practical equality of the Constitution may be preserved, and which, therefore, should be deemed unfavorable barriers to legislative power. Taxation may not be universal, but it must be general and uniform. Thus, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other

§23. i Loan Association V. Topeka, Wall. 655, 20 L. ed. 455; Lowell v.

20 Wall. 658, 20 L. ed. 455 ; Cheamey Boston, 111 Mass. 454, 15 Am. Rep.

V. Hooser, 9 B. Mon. 330; County 39; Cole v. LeGrange, 113 U. S. 1,

of San Mateo v. Southern Pacific 28 L. ed. 896, 5 Sup. Ct. Rep. 416;
R. B. Co. 8 Sawy. 238, 13 Fed. 722; Parkerslurg v. Brovm, 106 U. S.
County of Santa Clara v. Southern 487, 27 L. ed. 238, 1 Sup. Ct. Rep.
Pac. R. R. Go. 9 Sawy. 165, 18 Fed. 442.
385 ; Lexington v. McQuillan's Heirs, 8 State v. Toijynship of Readington,
9 Dana, 513, 35 Am. Dec. 159; State 36 N. J. L. 66, 70; quoted with ap-
V. Township of Readington, 36 N. J. proval in County of San Mateo v.
L. 66, 70. Southern Pacific R. R. Go. 8 Sawy.
^Loam Association v. Topeka, 20 238, 13 Fed. 722, 735.

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ground than that of public service ; and, if a tax be laid on land,
no appropriated land within the limits of the state can be con-
stitutionally exempted, unless the owner be entitled to such
immunity in consequence of public service. The legislature, in
the plenitude of its taxing power, cannot have constitutional
authority to exact from one citizen, or even one county, the
entire revenue for the whole commonwealth. Such an exaction,
by whatever name the legislature might choose to call it, would
not be a tax, but would be undoubtedly the taking of private
property for public use, and which could not be done consti-
tutionally without the consent of the owner or owners, or without
restitution of the value in money. The distinction between con-
stitutional taxation and the taxing of private property for public
use by the legislative will may not be defensible with perfect
precision. But we are clearly of the opinion, that whenever the
property of a citizen shall be taken from him by the sovereign
will, and appropriated, without his consent, to the benefit of
the public, the exaction should not be considered as a tax, un-
less similar contributions be made by that public itself, or shall
be exacted rather by the same public will from such constituent
members of the same community, generally, as own the same
kind of property. Taxation and representation go together, and
representative responsibility is one of the chief conservative
principles of our form of government. When taxes are levied,
therefore, they must be imposed on the public in whose name
and for whose benefit they are required, and to whom those who
impose them are responsible. And, although there may be a
discrimination in the subject of taxations, still persons in the
same class, and property of the same kind, must generally be
subjected alone to the common burden. This alone is taxation
according to our custom of constitutional taxation in Kentucky.
And this idea, fortified by the spirit of our Constitution, is,
in our judgment, confirmed by so much of the twelfth section
of the tenth article as declares, 'Nor shall any man's property
be taken or applied to public use without the consent of his rep-

representatives, and without just compensation of his representatives, and without just compensation being previously made to him.' The object of this great guaranty was to secure every citizen against spoliation by a dominant faction or by a rapacious public power, acting in obedience to the will of a con-

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stituent body for whose use his property may be taken, and from whom a similar contribution is required. It intended that public responsibility and the power of exaction for public use should be, in some degree, commensurable, and, therefore, it should be understood as providing that the public shall not take the property of any citizen for its own use without his consent or an equivalent in money or in similar contributions by itself. If this be not its practical effect, it is a mere hritum fulmen, and may always be evaded by exactions made in the false semblance of taxation." *

In a later case the same court said, speaking through Chief-Justice Maes hall:

"Conceding to the General Assembly a wide range of discretion as to the objects of taxation, the kind of property to be made liable, and the extent of territory within which the local tax may operate, it is argued, in the opinion referred to, that there must be some limit to this legislative discretion; which, in the absence of any other criterion, is held to consist in the discrimination to be made between what may reasonably be deemed a tax, for which a just compensation is provided in the objects to which it is to be devoted, and that which is palpably not a tax, but which, under the form of a tax, is the taking of private property for public use, without just compensation. If there be such a flagrant and palpable departure from equity, in the burden imposed ; if it be imposed for the benefit of others, or for purposes in which those objecting have no interest, and are, therefore, not bound to contribute, it is no matter in what form the power is exercised — whether in the unequal levy of the tax, or in the regulation of the boundaries of the local government, which results in subjecting the party unjustly to local taxes, it must be regarded as coming within the prohibition of the Constitution designed to protect private rights against aggression, however made, and whether under the color of recognized power or not." ^

"When such exaction is made without reference to common ratio, it is not a tax, whatever else it may be termed; it is

* City of Lexington v. McQuillan's 6 Ghewney v. Hooser, 9 B. Mon. Beirs, 9 Dana, 513, 517. 330, 338.

rather a forced contribution, amounting, in fact, to simple confiscation." *

An exemption of a certain kind of property either directly or by a law reducing the assessment was held void where the state Constitution required that all taxes be "proportional and reasonable." ' In Pennsylvania, a statute imposing a license tax upon dealers in real estate transactions whose business was \$1,000 or more and exempting those whose business was less, was held to be unconstitutional.* There, however, the State constitution provided : "All laws exempting property from taxation, other than the property above enumerated, shall be void." In Hawaii, an income tax which exempted incomes of less than \$1,000 and taxed the whole amount of larger incomes was held to be unconstitutional.' The court then said:

"The attributes of equality and uniformity inhere, however, to some extent in the very idea of a tax." "The inhibition to tax in any other way than that which accomplishes the result that each member of society bears only his proportion or share of the whole expense of government, does not differ essentially from a provision that taxation shall be equal and uniform. Certainly the taxing of A upon property of the same value as that of B more than the tax laid upon B would be compelling A to pay more than his 'proportion or share' and the taxation would not be 'equal and uniform.' In the light of this reasoning to tax A one per cent, of his entire annual income, if it exceeds the sum of four thousand dollars, and to tax B on only two thousand dollars of his income if the whole does not exceed four thousand dollars, and to impose no tax at all upon C if his income be less than two thousand dollars would be obliging A to pay more than his 'proportion or share' of the tax, and such taxation would not be 'equal and uniform.' To this it is replied that the legislature has the power to exempt from taxation such subjects as it deems proper. But by all the authorities the exemptions must be supported by public considerations and tend to promote the general welfare. Of this character is the exemption from taxation long

6 Mr. Justice Field, in *County of v. Clarh*, 195 Pa. 634, 635, 57 L.R.A. Santa Clara v. Southern Pacific R. 348, 86 Am. St. Rep. 694, 46 Atl. Co. 9 Sawy. 165, 18 Fed. 585, 400. 286.

7 *Inhabitants of Cheshire v. County Commissioners*, 118 Mass. 386. 112, 124.

« Commonwealth, Use of Titusville

existing in this country to every taxpayer property to the value of three hundred dollars, the obvious purpose being not to tax at all those who are so poor as to possess property of only that value or less. But the statute in question does not exempt from taxation all incomes to the amount of two thousand dollars, but imposes upon him who receives over \$4,000 a year a tax of one per cent, upon the whole amount, whereas the person whose income is less than four thousand dollars pays only on the excess of income over two thousand dollars. It is well settled that the legislature has the power to classify objects of taxation, but it is equally well settled that selections cannot be made out of a class for taxation and others of the same class be exempted. The effect of this section of the Act would be to place the burden of this tax upon those whose annual incomes are over four thousand dollars, and who constitute a minority of the community. It is argued that the exemption of incomes of two thousand dollars is reasonable and in furtherance of a public purpose, because the sum of two thousand dollars is the average annual cost of living of a family. This is a mere supposition and not to be taken for granted as true in our community. But if it be once conceded that exemptions so large as this can be made as a public benefit then exemptions of a much larger amount can be made which might place the whole burden upon the rich and if pushed to an extreme be a confiscation and not the proportional taxation authorized by the Constitution." ^'' In accordance with these views is the concurring opinion of Mr. Justice Field in the Pollock case : "Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed uniform. In my judgment, Congress has rightfully no power, at the expense of others, owning property of a like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various States, which advance no national purpose or public interest and exist solely for the pecuniary profit of their members.

10 1Ud.

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"Where property is exempt from taxation, the exemption, as has been justly stated, must be supported by some consideration that the public, and not private, interests will be advanced by it. Private corporations and private enterprises cannot be aided under the pretence that it is the exercise of the discretion of the legislature to exempt them. Loan Association v. Topeka, 20 Wall. 655, 22 L. ed. 455 ; Parkersburg v. Brown, 106 U. S. 487, 27 L. ed. 238, 1 Sup. Ct. Eep. 442; Barbour v. Louisville Board of Trade, 82 Ky. 645, 654, 655 ; Lexington v. McQuillan's Heirs, 9 Dana, 513, 516, 517; and Sutton's Heirs v. Louisville, 5 Dana, 28, 31.

"Cooley, in his treatise on Taxation (2d ed. 215), justly observes that: 'It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate taxation.'

"The income law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in one of his papers (the *Continentalist*), 'the genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands; whatever liberty we may boast of in theory, it cannot exist in fact while (arbitrary) assessments continue.' 1 Hamilton's Works, ed. 1885, 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in

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essential character as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double the rate of Protestants, and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the government and more self-respect for himself feeling that though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved, they will ultimately triumph over all reverses of fortune.

"There is nothing in the nature of the corporations or associations exempted in the present act, or in their method of doing business, which can be claimed to be of a public or benevolent nature. They differ in no essential characteristic in their business from 'all other corporations, companies, or associations doing business for profit in the United States.' Act of August

15, 1894, c. 349, § 32.

"A few words as to some of them, the extent of their capital and business, and of the exceptions made to their taxation :

"1st. As to mutual savings banks. — Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. To limit is fixed to the property and income thus exempted — it may be \$100,000 or \$100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the Comptroller of the Currency, sent by the President to Congress December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted was 646, and the total number of stock savings banks was 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way; and yet the 646 are exempt

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and the 378 are taxed. He also showed that the total deposits in savings banks were \$1,748,000,000.

"2d. As to mutual insurance corporations. — These companies were taxed under previous income tax laws. They do business somewhat differently from other companies ; but they conduct a strictly private business in which the public has no interest, and have been often held not to be benevolent or charitable organizations.

"The sole condition for exempting them under the present law is declared to be that they make loans to or divide their profits among their members, or depositors or policy-holders. Every corporation is carried on, however, for the benefit of its members, whether stockholders, or depositors, or policy-holders. If it is carried on for the benefit of its shareholders, every dollar of income is taxed ; if it is carried on for the benefit of its policy-holders or depositors, who are but another class of shareholders it is wholly exempted. In the State of New York the act exempts the income from over \$1,000,000,000 of property of these companies. The leading mutual life insurance company has property exceeding \$204,000,000 in value, the income of which is wholly exempted. The insertion of the exemption is stated by counsel to have saved that institution fully \$200,000 a year over other insurance companies and associations, having similar property and carrying on the same business, simply because such other companies or associations divide their profits among their shareholders instead of their policyholders.

"3d. As to building and loan associations. — The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable insti-

tutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, Dayton, Ohio, has a capital of \$10,000,000, and Pennsylvania has \$65,000,000 invested in these associations. The census report submitted to Congress by the President, May 1, 1894, shows that their property in the United States amounts to over \$628,000,000. Why should these institutions and their immense accumulations of property be singled out for the special favor of Congress and be freed from their just, equal, and proportionate share of taxation when others engaged under different names, ;.n similar business, are

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subjected to taxation by this law ? The aggregate amount of the savings to these associations, by reason of their exemption, is over \$600,000 a year. If this statement of the exemptions of corporations under the law of Congress, taken from the carefully prepared briefs of counsel and from reports to Congress, will not satisfy parties interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the Constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any doubt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension. . . . The inherent and fundamental nature and character of a tax is that of a contribution to the support of the government, levied upon the principle of equal and uniform apportionment among the persons taxed, and any other exaction does not come within the legal definition of a tax.

"This inherent limitation upon the taxing power forbids the imposition of taxes which are unequal in their operation upon similar kinds of property, and necessarily strikes down the gross and arbitrary distinctions in the income law as passed by Congress. The law, as we have seen, distinguishes in the taxation between corporations by exempting the property of some of them from taxation and levying the tax on the property of others when the corporations do not materially differ from one another in the character of their business or in the protection required by the government. Trifling differences in their modes of business, but not in their results, are made the ground and occasion of the greatest possible differences in the amount of taxes levied upon their income, showing that the action of the legislative power upon them has been arbitrary and capricious and sometimes merely fanciful." ^^ The subsequent de-

Trust Co. 157 U. S. 429, 595-599, Gt. Rep. 673.

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cision which sustained the corporation income tax of 1909 seems inconsistent with these positions.*'"

The Supreme Court of Wisconsin has held that an inheritance tax was void that exempted estates of less than \$10,000 in value. '^

But taxes upon inheritances, State " and Federal," which were progressive in their nature, imposing a larger percentage upon inheritances of greater value, have been sustained, although in one case there was an exemption of an estate worth less than \$20,000,** and in another there was an exemption of an estate worth \$10,000 or less.*® The Supreme Court then, however, used the following significant language: "The review which we have made exhibits the fact that taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also some authoritative thinkers, and a number of economic writers, contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative and not judicial. The grave consequences which it is asserted must arise in the future if the right to levy a progressive tax be recognized involves in its ultimate aspect the mere assertion that free and representative government is a failure, and that the grossest abuses of power are foreshadowed unless the courts usurp a purely legislative function. If a case should ever arise, where an arbitrary and confiscatory exaction is imposed bearing the guise of a progressive or other form of tax, it will be time enough to consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual,

Ilino-Ilint V. stone Tracy Co. 220 1* KnowUon v. Moore, 178 U. S. U. S. 108, 55 L. ed. 389. 41, 44 L. ed. 969, 20 Sup. Ct. Rep.

11 Black V. State, 113 Wis. 205, 747.

90 Am. St. Eep. 853, 89 N. W. 522. 15 Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 285, 42 L. ed. 1037, 1039, 18 Sup. Ct. Rep. 594. For note on classification of inheritances or gifts for purposes of succession tax, see 6 L.R.A.(N.S.) 732. 594.

13 Magoun v. TUinois Trust & Savings Bank, 170 U. S. 283, 42 L. ed. 41, 61, 44 L. ed. 969, 977, 20 Sup. Ct. Rep. 594; Naches Ct. Rep. 747. 16 Knoielton v. Moore, 178 U. S. V. State, 129 Wis. 190, 8 L.R.A. (N.S.) 121, 108 N. W. 627, 9 Ann. Cas. 711.

Foster Income Tax. - 6.

even though there be no express authority in the Constitution to do so." "

The Supreme Court of Wisconsin moreover held an income tax to be valid which exempted an income of \$800 of a "wife, of \$1,200 of a husband and wife, of \$200 of each child under eighteen, and of \$200 of each additional person legally and wholly dependent upon the taxpayer for support; giving, however, no exemption to non-residents, nor to firms, corporations or joint stock companies. This was a progressive tax of one per cent, upon the first thousand, steadily increasing with each \$1,000 until it reaches the aggregate of six per cent on any sum exceeding \$2,000. The Court said : "It is said under this head that the allowance of exemptions to individuals and the denial of them to partnerships is unjust discrimination. The question depends, of course, upon whether there is any valid ground for classification. Is there such a substantial difference between the classes as to reasonably suggest or call for the propriety of different treatment ? We are clearly of opinion that this question must be answered in the affirmative. A partnership ordinarily has certain distinct and well known advantages in the transaction of business over the individual, arising from the fact that it allows a combination of capital, brains, industry, and thus makes it possible to accomplish many things which an individual in the same business cannot accomplish. Further than this, however, there is another consideration. If the partner have individual income from other sources than the partnership business (as many do), his exemptions will be allowed to him out of the individual income, and thus, if he were also allowed exemptions from the partnership income, he would be allowed double exemptions. Altogether there seems to be ample reason for the classification. The exemptions themselves do not seem to be seriously attacked, nor do we see any reason they should be. The most striking exemption is that of life insurance to the amount of \$10,000 in favor of one legally dependent on the deceased, but while this is somewhat large we cannot say that it is unreasonable, nor that there is not ample ground for classifying legally dependent persons, and extend-

17 Knowlton v. Moore, 178 U. S. 41, 109, 110, 44 L. ed. 969, 906, 997, 20 Sup. Ct. Rep. 747.

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ing an exemption to them -which is denied to others." Ob-^

jection is also made to the provision that the income of a wife-living -with her husband shall be added to the income of the husband, and the income of each child under eighteen years of age living -with its parent or parents shall be added to that of the parent or parents. This is another case of classification,,

and it is only justifiable in case there is some substantial difference of situation -which suggests the advisability of difference-of treatment. We think there clearly is such a difference, in this, that experience has demonstrated that otherwise there -will- be many opportunities for fraud and evasion of the law, which the close relationship of husband and wife or parent and child makes possible, if not easy. The temptation to make colorable shifts and transfers of property in order to secure double or even triple exemptions, if there were not some provision of this kind in the law, would unquestionably be very great. There is no such temptation or opportunity in the case of the single man, or the man and wife who are living separately." ^®

The Supreme Court has sustained the provision of a State constitution which provided for the forfeiture of tracts of one-thousand acres or more for failure of the owner to place the same upon the land books for taxation, while exempting from such forfeiture tracts with an acreage of less than one thousand acres ; "" and a State tax upon the property of telephone companies which exempted those whose gross receipts did not exceed \$500.^ ^

It is true that the courts recognize the validity of some exemptions from taxation. Property which is considered to be used in a way beneficial to the community, such as the property of religious or charitable corporations, may be exempted from taxation. So, persons whose means are insufficient to enable them to contribute to the expense of the support of the government may also be exempted.^ ^ It may well be claimed, however, that the limit of this exemption, although largely

18 Income Tax Cases, 148 Wis. 456, 21 Citizens' Telephone Co. v. Fulfil, 512, 134 N. W. 673, 135 N. W. 1er, 229 U. S. 322, 57 L. ed. - , 33 W. 164, Ann. Cas. 1913 A, 1147. Sup. Ct. Rep. 833.

19 1Ud. 88 City of New Orleans v. Fowrchtt,

20 King v. Mullins, 171 U. S. 404, 30 La. Ann. 910. 435, 43 L. ed. 214, 226, 18 Sup. Ct.

Rep. 925.

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within the discretion of the Legislature, cannot be so absolutely.

"Absolute equality and uniformity may not be attainable in practice, but an approximation to them is possible, and any plain departure from the rule will defeat the tax." ^' Suppose that Congress should enact a law imposing an income tax upon a single individual, selecting for that purpose the richest man in the United States, or some other. In either case, the courts would undoubtedly hold the attempted imposition not a tax, but a confiscation, and consequently invalid.^ *

Is there any difference in principle between such a law and one which should exempt from liability all persons having less than a specified income, which income was possessed by but one individual in the United States ? If such an act would be concededly unconstitutional, upon what distinction rests the validity of a tax law which exempts all individuals having less than a specified income, and includes in the exemption many who are amply able to contribute to the support of the government, so that it is clearly the intention of the law-maker to legislate against specified classes of the community, and to impose upon them more than their fair share of the burden of supporting the government?

If an act is constitutional which exempts all whose annual income is less than \$4,000, and taxes those whose income is greater, why might not Congress exempt those with the greater income and confine the tax to those with an annual income less than \$4,000 ? The danger of such legislation is not chimerical, for on the statute books of Arkansas may be found an exemption of those manufacturers and miners whose monthly income exceeds a specified sum.^°

The questions here suggested are interesting and important, but the writer expresses no opinion as to their ultimate answers.^*

SS Mr. Justice Field in County of supra, cited with approval in County San Mateo v. Southern Pacific R. of San Mateo v. Southern Pacific R. Co. 8 Sawy. 238, 13 Fed. 722, R. Co. 8 Sawy. 238, 13 Fed. 722, 734. See, also. Worth v. Wilming- 734; County of Santa Clara v. South- ton R. R. Co. 89 N. C. 291, 45 Am. ern Pacific R. Go. 9 Sawy. 165, 13 Kep. 679 ; Marion R. R. Co. v. Cham- Fed. 385, 400. plain, 37 Kan. 682, 16 Pac. 222. 25 Arkansas Acts of 1871; Cooley

n* Lexington v. McQuillan's Beirs, on Taxation, 2d Ed. 171.

■fl Dana, 513, 35 Am. Dec. 159, quoted 26 In Massachusetts a succession

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§ 24. Alleged unconstitutionality of the discrimination against corporations. The act may be further attacked from a similar point of view, because it discriminates against corporations, joint stock companies and associations by taxing all their profits without that deduction of \$3,000 which is allowed in the case of individuals. Mr. Justice Field and Judge Sawyer, in the San Mateo Tax Case, hold the provision of the California Constitution which provided that in estimating their property for the purpose of taxation, railroad and other quasi-public corporations should not be entitled to a deduction of the amount of mortgages, although such deductions were allowed to individuals, to be unconstitutional as an infringement of the Fourteenth Amendment to the Federal Constitution.^ Mr. Justice Field said, speaking of the Fourteenth Amendment :

"The concluding clause of its first section was designed to cover all cases of possible discrimination and partial legislation against any class, in ordaining that no state shall deny any person within its jurisdiction the equal protection of the laws. Equality of protection is thus made the constitutional right of every person; and this equality of protection implies not only that the same legal remedies shall be afforded to him for the prevention or redress of wrongs and the enforcement of rights, but also that he shall be subjected to no greater burdens or charges than such as are equally imposed upon similar property of others, similarly situated, and thus made to bear an unequal share of the public burdens. Property may indeed be classified, and different kinds be subject to different rates. Real property may be taxed at one rate and personal property at another. Property in particular places may be taxed for

tax, which exempted successions of \$1,000 income was constitutional because \$10,000 or less, was held constitutional. *Minot v. Winthrop*, 162 Mass. 113, 26 L.R.A. 259, 38 N. E. 512. See, however, the strong dissenting opinion of Judge Lathrop. In Louisiana an exemption of personal property worth \$500 was held not to be a violation of the requirement of uniformity under the State Constitution. *City of New Orleans* 517, 13 Fed. V. *Fourchy*, 30 La. Ann. 910 (1878), *Clara v. Southern Pacific R. R. Co.* Spencer, J. The court avoided the question whether an exemption of

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local purposes, while property situated elsewhere is exempt. Licenses may also vary in amount, according to the calling or business for which they are exacted. But arbitrary distinctions not arising from real differences in the character or situation of the property, or which do not operate alike upon all property of the same kind similarly situated, are forbidden by the amendment. Equality in the imposition of burdens is the constitutional rule as applied to the property of individuals, where it is subject to taxation at all ; and this imports that a uniform mode shall be followed in the estimate of its value, and that the con-

tribution exacted shall be in some uniform proportion to such value prescribed, according to the nature or position of the property. All state action, constitutional or legislative, impinging upon the enforcement of this rule, must give way before it.'

"The Fourteenth Amendment of the Constitution, in declaring that no statute shall deny to any person within its jurisdiction the equal protection of the laws, creates a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. Whatever the state may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security inder them to every one on similar terms, in his life, his liberty, his property, and in the pursuit of happiness. It implies not only accessibility by him, on the same terms with others, to the courts of the country for security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts, but also an exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances.

"Unequal exactions in every form, or under any pretence, are absolutely forbidden; and, of course, unequal taxation, for it is in that form that offensive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws, where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the

3 County of San Mateo v. Southei-n Pacifio R. R. Co. 7 Sawy. 517, 13 Fed. 145, at pp. 150, 151.

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same kind, similarly situated, at different rates; where, for instance, one may be taxed at one per cent, on the value of his property, another at two or five per cent, or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property.' As the foundation of all just and equal taxation is the assessment of the property taxed, that is, the ascertainment of its value, in order that the tax may be estimated according to some ratio to the value, uniformity of taxation necessarily requires uniformity in the mode of assessment, as well as in the rate of taxation, or, to quote the language of the Supreme Court of Ohio expressing the same thought: 'Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.' (Exchange Bank of Columbus V. Hines, 3 Ohio St. Kep. 1.)" *

In a later case the Supreme Court of the United States said, speaking through the same Justice :

"The amendment does not prevent the classification of property for taxation, subjecting one kind of property to one rate of taxation, and another kind of property to a different rate — distinguishing between franchises, licenses, and privileges, and visible and tangible property, and between real and personal property, 1^or does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it. And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected." ®

The Revised Statutes provide that "All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to

3 County of San Mateo v. Southern Home Insurance Co. v. New York Pacific Railroad Company, 8 Sawyer, 134 U. S. 594-606, 33 L. ed. 238, 13 Fed. 722, at page 733. 1025-1029, 10 Sup. Ct. Rep. 593.

* County of San Mateo v. Southern Pacific B. R. Co. 8 Sawyer, 13 Fed. 722, at page 733.

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sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other." *

In sustaining the Wisconsin income tax, the Supreme Court of that state said:

"Much complaint is made of that part of sec. 108Tm' — 6 which provides a different rate of taxation for the income of corporations from the rate prescribed for individuals, and this also is said to be unjust discrimination. Again the question is whether there be substantial difference of situation between individuals and corporations which suggest and justify this difference in treatment, and again it seems that the answer must be Yes. The corporation is an artificial creation of the state endowed with franchises and privileges of many kinds which the individual has not. It might be said with truth that the clause could be justified on the ground that it is an amendment to every corporate charter, which the legislature has the undoubted right to make, but it is not necessary to rely on that proposition. The corporate privileges, which are exclusively held by corporations, and the real differences between the situation of a corporation and an individual, among which may be mentioned the fact that the corporation never is obliged to pay

an inheritance tax, plainly justify a difference of treatment in the levying of the income tax. Were the income tax a tax upon property, there could be no difference in rate, for taxation of property must still be on a uniform rule, but, as has been heretofore noted, it is not a tax upon property within the meaning of our constitution." '

Neither the Fourteenth Amendment nor any part of the Revised Statutes are, of course, directly binding upon Congress. They may, however, perhaps be considered as some evidence of the opinions of the American people upon those limits to legislative powers which are said to be necessarily implied in all constitutional governments irrespective of the express provisions of a written Constitution.*

6 U. S. Rev. Stat. § 1977, U. S. 8 Loom Association v. Topeia, 20 Comp. Stat. 1901, p. 1259. Wall. 658, 22 L. ed. 459.

"! Income Tax Cases, 148 Wis. 456,
134 N. W. 673, 135 N. W. 1b4.

§ 25] DEDUCTIONS AT THE SOURCE. T3

§ 25. Constitutional objection to the deduction of the tax at the source. So much of the statute as provides that debtors shall in certain cases deduct and pay the tax at the source has been attacked as unconstitutional. The objection seems to have been first suggested by Mr. Albert H. Walker[^] of the New York bar.[^] It has since been raised in the different suits brought to obtain a decision setting aside the statute as unconstitutional. It is well settled that Congress has the power to enact that a tax due from one person shall be paid by another.* This is the usual method adopted by the States for the taxation of the shares of national banks.[^] The Supreme Court has sustained the power of the State to compel safe deposit companies to assist in the collection of an inheritance-tax.* It would seem, however, that such a provision, if it imposed an excessive and unreasonable burden upon the party required to deduct and pay the tax at its source, might be declared to be invalid as taking his property without due process of law. Under the Treasury Regulations as originally promulgated, an expense was entailed upon those compelled to deduct and pay which was out of all proportion to the amount collected. Many banks and trust companies were obliged to employ new staffs of clerks for the sole purpose of attending to such matters. In one or two institutions this is said to have cost as much as \$25,000 during the first year.[®] In most cases, it might be argued that the benefits from the use of the sums retained during the interval before the tax is paid was a sufficient indemnity. In many instances the consequent expense was much greater than the taxes which were thus collected. Whether such a disproportionate expense is a necessary result of the tax or can be obviated by other Treasury Regulations, is a matter which will receive consideration when the validity of these parts of the statute is

argued in the courts.

§ 25. 1 Income Tax Law, Ana- S First Nat. Bank v. Kentucky 9-lyzed and Clarified by Albert H. Wall. 353, 363, 39 L. ed. 701, 704.

Walker, p. 26. * National Safe Deposit Co. v.

2 First Nat. Bank v. Kentucky, 9 Stead, 232 U. S. 58, 58 L. ed. 504 34

Wall. 353, 363, 19 L. ed. 701, 704; Sup. Ct. Rep. 209.

National Safe Deposit Co. v. Stead, B N. Y. Times, Jan'y. 25 1914
232 U. S. 58, 58 L. ed. 504, 34 Sup.
Ct. Rep. 209.

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§ 26. Constitutional objections to extra-territorial taxation. Tlie act provides for the levy of the income tax, "upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States though not a citizen thereof * * * and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere." ^ It may be claimed that so much of this tax as affects non-residents is invalid as extra-territorial taxation.^ This claim, however, seems to be without support. There are dicta of the Supreme Court of United States, which have been claimed to support the doctrine that the States have no power of extra-territorial taxation.^ A critical examination of these cases, however, will show that the acts in question were held void, because in ■one case, the statute, passed subsequent to an indebtedness by a domestic corporation to a citizen of another State, authorized the corporation to deduct from the interest which he promised to pay to such creditor the amount of the tax paid to the State, and thus impaired the obligation of its contract ; * and in another because the tax discriminated against citizens of other States ; * and in a third because it was held to be an unreasonable regulation of the right to maintain a railroad in the taxing State to •oblige a foreign railroad company to collect a tax out of the interest due at its home office without the State to residents of such State, and to be, moreover, an impairment by the State of the obligation of its contract by which it first admitted the foreign railroad.® The Supreme Court has held that a State may ■compel one of its own citizens to pay a tax upon personal property, such as mortgages executed and secured by a lien in another State,' and upon the bonds of another "State exempted by

§ 26. 1 Act of Oct. 3, 1913, sub- 4 State Tax on Foreign-held Bonds,

^section A, subd. 1. 15 Wall. 300, 21 L. ed. 179.

2 State Tax on Foreign-held-Bonds, s Ward v. Maryland, 12 Wall. 421,
15 Wall. 300, 21 L. ed. 179; Ward 428, 20 L. ed. 449, 452.

T. Maryland, 12 Wall. 418, 428, 20 «N. Y. L. E. & W. R. R. Co. v.

L. ed. 449, 452. Pennsylvania, 153 U. S. 628, 38 L.

8 ST. y. L. E. & W. R. R. Co. V. ed. 846, 14 Sup. Ct. Rep. 952.

JPermsylvania, 153 U. S. 628, 38 L. "J Eirkland v. Hotchkiss, 100 U.

■ed. 846, 14 Sup. Ct. Rep. 952. S. 491, 25 L. ed. 558.

:§ 26] EXTEA-TEEEITOEIAL TAXATION. 75

the latter from taxation.' Whatever may be the limitations upon the power of the States in this respect, the taxing power of the United States is not thus limited.

Congress may tax all persons within the United States and all property within the United States, whether owned by residents or non-residents, including debts due by residents of the United States to non-resident aliens, which may be collected from the debtor under a statute authorizing him to deduct the amount of the tax from the sum due his debtor.^ This last power is not possessed by the several States.''''

8 Bona/parte v. Appeal Tax Court the Supreme Court unanimously, in •of Baltimore, 104 U. S. 592, 26 L. an opinion delivered by Mr. Justice ed. 845. Miller, sustained the taxation on

9 In this statement the writer has the following grounds : "The tax, followed the opinion of Mr. Justice in our opinion, is essentially an Bradley, with whom Mr. Justice excise on the business of the class Harlan concurred, in United States of corporations mentioned in the V. Erie Railway Company, 106 U. statute. The section is a part of the S. 327, Appendix, pp. 703-705, 27 system of taxing incomes,- earnings, L. ed. 151, 153, 154, 1 Sup. Ct. Eep. and profits adopted during the late 223, since he considers the reason- war, and abandoned as soon after ing, on which the opinions of the that war was ended as it could be court in that case and Railroad Com- done safely. The corporations men- jpany v. Collector, 100 U. S. 595, 25 tioned in this section are those en- L. ed. 647, are based, inconsistent gaged in furnishing road-ways and with the case, holding that states water-ways for the transportation of have no power to impose such tax- persons and property, and the mani- ation. The question at bar was the fest purpose of the law was to levy construction of that section of the the tax on the net earnings of such Income Tax {§ 122 of the Act companies. How were these 'earn- of June 30, 1864, Chapter 173, as ings, profits, incomes or gains' to amended by the Act of July 13, 1866, be most certainly ascertained? In Ch. 184) , which taxes railroad and every well-conducted corporation of other transportation companies upon this character these profits were dis- dividends and interest for money posed of in one of four methods;

loaned on the security of bonds or namely, distributed to its stock- other evidences of interest to the holders as dividends, used in the con- amount of five per cent, and author- struction of its roads or canals, paid ized such corporations to deduct and out for interest on its funded debts, "Withhold from all payments on the or carried to a reserve or other fund .account of any interest, or coupons, remaining in its hands. Looking to ■or dividends due and payable as these modes of distribution as the aforesaid, the state tax, providing surest evidence of the earnings which that the payment of the tax "should Congress intended to tax, and as less discharge said company from that liable to evasion than any other, the amount of dividend, or interest, or tax is imposed upon all of them, coupon on the bonds, or other evi- The books and records of the com- pendence of their indebtedness so held pany are thus made evidence of the by any person or party whatever; profits they have made, and the cor- except where said companies may poration itself is made responsible have contracted otherwise." In Rail- for the payment of the tax. Mani- road Company v. Collector, 100 U. festly such a mode of ascertaining S. 595, 598-599, 25 L. ed. 647, 648, the net earnings of the company

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would not be complete unless the sums paid as interest on their bond- ed debts were taKen into the account. Of course it was competent tor Con- gress 10 tax only tne earnings afier aeducung this interest paid on tiieir debt, or to treat the sum so paid as part of tue net earnings, ana paid out of them as dividends were. It adopted tue latter policy. It re- sults from this course of observa- tion tliat the tax was not laid on the bondholder wuo received tiie interest, but on tiie earnings ol tlie corpora- tion which paid tue interest, it is very true tliat the act went fuither, and declared that, except wlien tne company had contracted otherwise, it. might deduct this tax from the amount due tne bondholders. And where the bonduolder was subject to congressional legislation, by reason of citizenship, residence, or sitv^ of the property taxed, it was within

the lawful power of Congress so to do. Whether, as a question of international law, this declaration would relieve the corporation from the obligation to pay its foreign bondholders the full sum for which it contracted, we need not discuss; for this court, on all such subjects, is bound by the legislative and political departments of its own government. The tax is laid by Congress on the net earnings, which are the results of the business of the corporation, on which Congress has clearly a right to lay it; and being lawfully assessed and paid, it cannot be recovered back by reason of any inefficiency or ethical objection to the remedy over against the bondholder." In this case, which involved but a small amount, there was no dissent. In a subsequent case of United States v. Erie Railway Co. 106 U. S. 327, 330, 27 L. ed. 151, 153, 1 Sup. Ct. Rep. 223, which involved a large amount, a majority of the court based their decision on the authority of the former case without further reasoning. Mr. Justice Field, who had concurred in the former judgment, in a strong dissenting opinion demonstrated that the tax was in effect upon the bondholders and not upon the corporation; and argued that "There are limitations upon the powers of all governments,

without any express designation of them in their organic law; limitations which inhere in their very nature and structure, and this is one of them, - that no rightful authority can be exercised by them over alien subjects, or citizens resident abroad, or over their property there situated." The concurring opinion of Mr. Justice Bradley, with whom Mr. Justice Harlan agreed, is contained in the Appendix of that volume at pp. 703-705, 27 L. ed. 153, 154, 1 Sup. Ct. Rep. 223, which is as follows: "I concur in the judgment of the court in this case, but not for the reasons^ given in Railroad Company v. Collector, 100 U. S. 595, 23 L. ed. 647.

I concurred in the judgment in that case, as in this, on grounds essentially different from those given by the court. I always regarded the tax which, by the one hundred and twenty-second section of the Internal Revenue Act of 1864, was laid upon the interest payable on the bonds and upon the dividends declared on the stock of railroad and other corporations, as a tax on the incomes pro tanto of the holders of such bonds and stock. *Stoclcldale v. Jn- surance Companies*, 20 Wall. 323, 333, 22 L. ed. 348, 351; *liwilfoad Company v. Rose*, 95 U. S. 78, 24 L. ed. 376. The interest payable on bonds was not a tax upon the companies in respect of a debt owed by them, nor upon the property represented thereby. The property obtained by the proceeds of the loans represented by the bonds was taxable (if not taxed) in another form, and consisted of the railroad tracks or canal, and other specific property of the companies respectively. If taxed directly, it was indirectly by means of the duty of two and a half per cent, which was laid on their gross earnings. The tax laid upon their bonds was intended to affect the owners of them; and whilst the companies were directed to pay it, they were authorized to retain the amount from the instalments due to the bondholders, whether citizens or aliens. The objection that Congress had no power to tax non-resident aliens is met by the fact that the tax was not assessed against them personally, but against the rem, the

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Congress has the power to compel a resident of the United States to pay a tax upon property owned by him which is situated in a foreign country and upon which he pays taxes there."

§ 27. Constitutionality of Federal tax upon state officers, employees, and contractors, State or municipal bonds

credit, the debt due to them. Congress has the right to tax all property within the jurisdiction of the United States, with certain exceptions not necessary to be noted. In this case, the money due to non-resident bondholders was in the United States, — in their hands of the company, — before it could be transmitted to London, or other place where the bondholders resided. Whilst here, it was liable to taxation. Congress, by the internal revenue law, by way of tax, stopped a part of the money before its transmission, namely, five per cent, of it. Plausible grounds for levying such a tax might be assigned. It might be said that the creditor is protected by our laws in the enjoyment of the debt; that the whole machinery of our courts and the physical power of the government are placed at his disposal for its security and collection.

"Whether taxation thus imposed would be respected by foreign governments if the creditor could bring before their courts the debtor company or its property, does not concern us in considering the question now presented. There is nothing in the Constitution which authorizes this court, or any other court, to disaffirm the power of Congress to lay the tax. Congress is its own judge of the propriety or expediency of laying it.

"Indeed, so far as the power of Congress is concerned, regarded in reference to any power the courts have to limit or restrain it. I see no reason why Congress may not lay a tax upon any property on which the government can lay its hands, whether within or without the jurisdiction of the United States. If, in imitation of the dues levied by Denmark upon vessels passing through the Cattegat Sound, Congress should levy a duty upon all vessels passing

through the strait of Florida, I do not know of any power which the courts possess to prevent it. It might create complications with foreign governments, it is true, and involve the country in war; but Congress has the power, if it chooses to take the responsibility, of creating, or giving occasion to such complications. The responsibility rests upon it alone.

"So if, in taxing money due from the citizens of the United States to foreign citizens, any complications arise with the governments to which the latter are subject, Congress alone has the responsibility, and is the only department of our government which has a right to take such a responsibility. In *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179, the state legislature had laid a tax on the interest payable upon the bonds of all corporations doing business in the state; and authorized the companies to retain the amount out of the interest payable to the bondholders without regard to their residence or nationality. I concurred in the judgment rendered in that case on the ground that the state, in passing such a law, applicable to pre-existing contracts, exceeded its just powers under our form of government, and that the law, in its effect upon non-resident bondholders, impaired the obligation of the contract.

"Considering, therefore, that if Congress chooses to take the responsibility of levying such a tax as the one in question, the courts have no power to control its action, or to give any relief to parties affected by it, I concur in the judgment of reversal."

10 *State Tax on Foreign-held Bonds*, 15 Wall. 300, 21 L. ed. 179.

11 *Kirhland v. Botchkiss*, 100 U. S. 491, 25 L. ed. 558.

and State corporations. Whether the Sixteenth Amendment authorizes the taxation of incomes from state and municipal bonds is a disputed question. In a special message to the legislature of the State of ISTew York on January 25th, 1910^ Governor Hughes (now a justice of the Supreme Court) said: "I am in favor of conferring upon the Federal government the power to lay and collect an income tax without apportionment among the States according to the population. I believe that this power should be held by the Federal government so as to properly equip it with the means of meeting national exigencies.

"But the power to tax incomes should not be granted in such terms as to subject to Federal taxation the incomes derived from bonds issued by the State itself or those issued by municipal governments organized under the State's authority.

"To place the borrowing capacity of the State and of its governmental agencies at the mercy of the Federal taxing power would be an impairment of the essential rights of the State which as its officers we are bound to defend.

"You are called upon to deal with a specific proposal to amend the Constitution, and your action must necessarily be determined not by a general consideration of the propriety of a just Federal income tax, or of giving to the Federal government the power to lay such a tax, but whether or not the particular proposal is of such a character as to warrant your assent.

"This proposal is that the Federal government shall have the power to lay and collect taxes on incomes from whatever source derived. The comprehensive words 'from whatever source derived' if taken in their natural sense, would include not only incomes from ordinary real or personal property but also incomes derived from State and municipal securities.

"In order that a market may be provided for State bonds and for municipal bonds, and that these means may be afforded for State and local administration, such securities from time to time are excepted from taxation. In this way lower rates of interest are paid than otherwise would be possible. To permit such securities to be the subject of Federal taxation is to place such limitations upon the borrowing power of the State as to make the performance of the functions of local government a matter of Federal grace.

"It is certainly significant that the words from whatever

source derived have been introduced into the proposed amend-

ment as if it were the intention to make it impossible for the claim to be urged that the income from any property, even though it consist of the bonds of the State or of a municipality organized by it will be removed from the reach of the taxing power of the Federal government.

"We cannot suppose that Congress will not seek to tax incomes derived from securities issued by the State and its municipalities. It has repeatedly endeavored to lay such taxes, and its efforts have been defeated only by implied constitutional restriction, which this amendment threatens to destroy. While we may desire that the Federal government may be equipped with all necessary national powers in order that it may perform its national function, we must be equally solicitous to secure the essential bases of State government. I, therefore, deem it my duty, as governor of the State, to recommend that this proposed amendment should not be ratified." ' '

The contrary opinion was expressed by Governor Fort in his message to the ISTew Jersey Legislature on February Yth, 1910:

"As to the claim that the Federal government might injure the States as such by taxing State bonds under an income tax, there are two satisfactory answers.

"First. Congress is representative of the States and elected by the citizens and the remedy is in the hands of the people of the States.

"Second. ~Eo Congress could be elected that would lay any tax with the view of destroying the power or integrity of the States.

"I am not inclined to accept the statement that the Supreme Court of the United States might construe the words 'from whatever source derived' as found in the pending amendment as justifying the taxing of the securities of any other taxing power. There is no express provision in the Federal Constitution prohibiting the Congress from imposing an income tax upon the securities of a State. Yet in the Pollock Case the Court held, speaking through Chief Justice Fuller, as follows: 'As the states cannot tax the powers, the operations or the property of

§ 27. 1 state Papers of Governor Hughes, 1910.

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the United States, so it has been held that the United States has no power under the Constitution to tax either the instrumentalities or the property of a State. A municipal corporation is the representative of the State and one of the instrumentalities of the State government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation.' The Supreme Court of the United

States has up to this time been the sure reliance not only of the nation, but of the States. The future may be safely rested there. The inability to impose an income tax if the necessities of government require it, would amount to a national calamity." '

And by Senator Root in a letter to a member of the Senate : '

"My Dear Senator: Since our conversation, last month, I have given much consideration to the scope and effect of the proposed Income Tax amendment to the Constitution of the United States.

Much as I respect the opinion of the governor of the State, I cannot agree with the view expressed in his special message of January 5th, and as I advocated in the Senate the resolution to submit the proposed amendment, it seems appropriate that I should state my view of its effects.

"The proposed amendment is in these words: 'Article 16. The Congress shall have power to lay and collect taxes on incomes from whatever source derived without apportionment among the several States and without regard to any census or enumeration.'

"The objection made to the amendment is that this will confer upon the national government the power to tax incomes derived, from bonds issued by the States or under the authority of the States, and will place the borrowing capacity of the State and its government agencies at the mercy of the Federal taxing power.

"I do not find in the amendment any such meaning or effect. I do not consider that the amendment in any degree whatever will enlarge the taxing power of the National government or will have any effect except to relieve the exercise of that taxing power from the requirement that the tax shall be apportioned

8 N. Y. World, February 8th, 1910. 3 N. Y. World, March, 1st, 1910.

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among the several States. The effect of the amendment will be, in my view, the same as if it said 'The United States may lay a tax on incomes without apportioning the tax, and this shall be applicable whatever the source of the income' subjected to the tax;' leaving the question, What incomes are subject to national taxation ? to be determined by the same principles and rules which are now applicable to the determination of that question.

"If we were to construe the proposed amendment only by a critical examination of its words, the view upon which the objection is based would be reached by practically cutting the provision in two and reading it as if it read 'The Congress shall

have power to lay and collect taxes on incomes from whatever source derived', without the concluding words. But we are not at liberty to do this. The amendment consists of a single sentence and the whole of it must be read together. It expresses but a single idea, and that is that the tax to which it relates must be laid and collected, 'without apportionment among the several States and without regard to any census or enumeration,' while the words 'from whatever source derived' are obviously introduced to make the exemption from the rule of apportionment comprehensive and applicable to all taxes and incomes.

"We are not left, however, to a mere critical examination of words. This provision as Mr. Justice Bradley said of the Constitution in the legal tender cases, is to be interpreted in the light of history and of the circumstances of the period in which it was framed.

"Justice Story said of another clause of the Constitution in *Briscoe v. The Bank of Kentucky*, 11 Pet 332, 9 L. ed. 738, 'and I mean to insist that the history of the Colonies before the Revolution and down to the very time of the adoption of the Constitution, constitutes the highest and most authentic evidence to which we can resort to interpret this clause of the instrument ; and to disregard it would be to blind ourselves to the practical mischiefs which it was meant to suppress and to forget all the great purposes to which it was to be applied.'

"This view must necessarily be applied to the proposed amendment if it be adopted. It will be construed in the light of *Poster Income Tax*. - 6.

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the judicial and political history which led to the proposal and which appears upon the public records of our government.

"What is that history ? The Constitution of 1787 conferred upon the national government the power of taxation without any limit whatever, except that taxes on imports were prohibited.

"The method of exercising the power, however, was subjected to two limitations : One, that imposts, duties, and excises should be uniform, and the other, that direct taxes should be apportioned among the States. The apportionment provisions were as follows : 'Article 1. Section 2. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, and' (amended, but not in this respect by the Fourteenth Amendment). 'Article 1. Section 9. No capitation or other direct tax shall be laid unless in proportion to the census of enumeration before directed to be taken.'

"For more than a hundred years after the adoption of the

Constitution various tax laws of Congress were from time to time brought before the courts upon objections that they imposed direct taxes in violation of the rule of apportionment. The decisions of the courts uniformly sustained these laws, from the Hylton Case in 1796 which sustained an unapportioned tax on carriages (3 Dallas, 171, 1 L. ed. 556) to the Springer Case, 1880 which sustained an unapportioned tax on income* (102 U. S. 586, 26 L. ed. 253).

"In the meantime numerous laws were passed and enforced imposing taxes on incomes without apportionment, and a great part of the means for carrying on a civil war was derived from, such taxes.

"In the year 1895, however, an income tax law included in the Wilson Tariff Act of 1894, was brought before the Supreme Court in the Case of Pollock v. The Farmers' Loan and Trust Co. and in that case the court decided against the law. The case was heard twice, on the first hearing a majority of the court held that a tax on income derived from real estate must be apportioned as a direct tax, because a tax on real estate itself would be direct, and the judges divided equally as to whether a tax on income derived from personal property must be apportioned (157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673),.

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"Upon the second hearing of the case the court, by a majority of five to four, held that a tax upon income, derived from personal property, must be considered a direct tax and must be apportioned (158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912), all the judges agreed that taxes on incomes derived from business or occupation need not be apportioned,

"The effect of these decisions was described in one of the minority opinions.

" 'But the serious aspect of the present decision is that by a new interpretation of the Constitution, it so ties the hands of the legislative branch of the government that without an amendment of that instrument, or unless this court, at some future time, should return to the old theory of the Constitution, Congress cannot subject to taxation - however great the needs or pressing the necessities of the government - either the invested personal property of the country, bonds, stocks, and investments of all kinds, or the income arising from the renting of real estate, or from the yield of personal property, except by the grossly unequal and unjust rule of apportionment among the States. Thus, undue and disproportioned burdens are placed upon the many, while the few, safely entrenched behind the rule of apportionment among the States on the basis of numbers, are permitted to evade their share of responsibility for the support of the government ordained for the protection of the rights of all.'

"It was so evidently impossible to collect an income tax by apportionment among the States according to the population, that the general judgment of the country confirmed the opinion that the decision in the Pollock Case had practically taken away from Congress a power of vital importance to the general government - a power, the exercise of which had, at least in one time of peril, proved essential to the Nation's life.

"The attention of the country was sharply called to the need of more government revenue for the first time after the Pollock Case by the decrease of customs and internal revenue receipts and the rapidly mounting deficit which followed the financial panic of 1907, and in the extraordinary session of Congress which began March 15, 1909, when the revised tariff bill came into the Senate, an amendment to the bill was introduced reproducing in substance the old Income Tax provisions of 1894 which the Supreme Court had held to be invalid both as to in-

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come derived from real estate and as to income derived from personal property. The avowed and necessary effect of including such provisions in the new tariff law would be to present again to the Supreme Court the same questions which had been decided in the Pollock case and to challenge a reversal of their decision. Thereupon the resolution for the submission of this amendment was introduced in the Senate and was passed by Congress.

"The proposal followed the suggestions of the Supreme Court in the Pollock Case. The evil to be remedied was avowedly and manifestly the incapacity of the National government resulting from the decision that income practically could not be taxed when derived either from real estate or from personal property, although it could be taxed upon when derived from business or occupation.

"The terms of the amendment are apt to cure that evil and to take away from the different classes of income considered by the court a practical immunity from taxation based upon the source from which they are derived.

There was no question in Congress or in the courts or in the country about the taxation of State securities. No one claimed that the inability of the general government to tax them was an evil. The inability to tax them did not arise from the terms of the Constitution but from the fact that being the necessary instruments of carrying on other and sovereign governments, they were not the proper subject of national taxation, and that therefore no provisions of the Constitution, however wide the scope of their language, could be held to apply to such securities, or to the income from them.

"Judge Cooley in his work on Constitutional Law says : 'The power to tax, whether by the United States or by the States, is

to be construed in the light of and limited by the fact that the States and the Union are inseparable, and that the Constitution contemplates the perpetual maintenance of each with all its constitutional powers unembarrassed and unimpaired by any action of the other. , The taxing power of the Federal government does not therefore extend to the means or agencies through or by the employment of which the States perform their essential functions,' etc.

"This rule of construction has been maintained for gener-

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ations. It is undisputed it was referred to with the approval of the Justices who wrote and delivered the opinions in the Pollack Case, both for and against the judgment. It has been declared again and again by the Supreme Court to be not open to question. It is a rule of construction just as controlling in defining the scope of the proposed amendment as it is in defining the scope of the existing provisions. Under it, from the earliest times of our government the apparently unlimited taxing power conferred by the terms of the Constitution has been held not to apply to the instrumentalities of the State.

"Under it acts of Congress which, by their expressed terms, appeared to include instrumentalities of State government have uniformly been held not to include them. This uniform, long established, and indisputable rule applied to the construction of our Constitution a rule which has been declared to be essential to a continuance of our dual system of government, that the words of that instrument conferring the power of taxation shall not be deemed to apply to anything but the proper subjects of national taxation. Under it we are forbidden to apply the words 'from whatsoever source derived' in the proposed amendment to any of the instrumentalities of State government.

"This amendment will be no new grant of power. The Congress already has the power to impose taxes on incomes from whatever source derived, subject to the rules of construction which excluded State securities from operations of the power; but the taxes so imposed must be apportioned among the States. Under the proposed amendment there will be the same and no greater power to tax incomes from whatever source derived, subject to the same rule of construction, but relieved from the requirement that the tax shall be apportioned.

"It appears, therefore, that no danger to the powers or instrumentalities of the State is to be apprehended from the adoption of the amendments.

"It would be cause for regret if the amendment were rejected by the Legislature of New York.

"It is said that a very large part of any income tax, under the amendment, would be paid by citizens of New York. That

is undoubtedly true, but there is all the more reason why our Legislature should take special care to exclude every narrow and selfish motive from influence upon its action and should

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consider the proposal in a spirit of broad National patriotism, and should act upon it for the best interests of the whole country.

"The main reason why the citizens of New York will pay so large a part of the tax is that 'Sew York is the chief financial and commercial center of a great country with vast resources and industrial activity. For many years Americans engaged in developing the wealth of all parts of the country have been going to New York to secure capital and market their securities and to buy their supplies. Thousands of men who have amassed fortune, in all sorts of enterprises in other States have gone to New York to live because they like the life of the city or because their distant enterprises require representation at the financial center.

"The incomes of New York are in a great measure derived from the country at large. A continual stream of wealth sets toward the great city from the mines and manufactories and railroads outside of New York. The United States is no longer a mere group of separate communities embraced in a political union : it has become a product of organic growth ; a vast industrial organization covering and including the whole country; the relation of New York City to the whole organization of which it is a part is the great source of her wealth and the chief reason why her citizens will pay so great a part of an income tax. We have the wealth because behind the city stands the country. We ought to be willing to share the burdens of a national government in the same proportion in which we share its benefits.

"The circumstances that originally justified the establishment of the rule of apportionment in the Constitution has long since passed away. It is universally conceded that its application to existing conditions would be impossible. The power of taxation which the rule makes it impossible for the Nation to exercise may be again, as it has once been, vital to the preservation of the National existence.

"It would be most unfortunate if the several States of the Union were to insist upon the continuance of this unjust and useless limitation upon the necessary powers originally and wisely granted to a National government."

The Act provides for the exemption of "the compensation of all officers and employees of a State or any political subdivision

thereof." * A similar exemption was contained in the Income Tax of 1894.^

The former acts contained no such express exemption, but it was held that the Constitution compelled the exemption by implication.

The reasoning upon which this decision was founded is thus stated in the opinion by Mr. Justice ISTexson:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the State govcril-ments by their respective constitutions remained unaltered and unimpaired, except so far as they were granted to the government of the United States. That the intention of the framers of the Constitution in this respect might not be misunderstood, this rule of interpretation is expressly declared in the Tenth Article of the Amendments, namely: 'The powers not dele-gated to the United States are reserved to the States respec-tively, or to the people.' The government of the United States, therefore, can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication.

"The general government, and the States, although both exist within the same territorial limits, are separate and dis-tinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme ; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, "'reserved,' are as independent of the general gov-ernment as that government within its sphere is independent of the States.

"The relations existing between the two governments are well stated by the present Chief Justice in the case of Lane County V. Oregon, 7 Wall. 76, 19 L. ed. 104. 'Both the States and the United States,' he observed, 'existed before the Consti-tution. The people, through that instrument, established a more perfect union, by substituting a national government, acting with ample powers directly upon the citizens, instead of the Con-federate government, which acted with powers greatly restricted, only upon the States. But in many of the articles of the Con-

4 Subsection B. » 28 St. at L. 509, chap. 349, § 32.

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stitution, the necessary existence of the States, and within their proper spheres, the independent authority of the States, are distinctly recognized. To them nearly the whole charge of in-terior regulation is committed or left ; to them, and to the people, all powers, not expressly delegated to the national government, are reserved.' Upon looking into the Constitution, it will be found that but a few of the articles in that instrument could be

carried into practical effect without the existence of the States. "Two of the great departments of the government, the executive and legislative, depend upon the exercises of the powers, or upon the people of the States. The Constitution guarantees to the States a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the States in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated, by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax. And, more especially, those means and instrumentalities which are the creation of their sovereign and unreserved rights, one of which is the establishment of the judicial department, and the appointment of officers to administer their laws. Without this power, and the exercise of it, we risk nothing in saying that no one of the States under the form of government guaranteed by the Constitution could long preserve its existence. A despotic government might. We have said that one of the reserved powers was that to establish a judicial department; it would have been more accurate, and in accordance with the existing state of things, at the time, to have said the power to maintain a judicial department. All of the thirteen States were in the possession of this power, and had exercised it at the adoption of the Constitution; and it is not pretended that any grant of

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it to the general government is found in that instrument. It is, therefore, one of the sovereign powers vested in the States, by their constitutions, which remained unaltered and unimpaired, and in respect to which the State is as independent of the general government as that government is independent of the Slates.

"The supremacy of the general government, therefore, so much relied on in the argument of the counsel for the plaintiff in error, in respect to the question before us, cannot be maintained. The two governments are upon an equality, and the question is whether the power 'to levy and collect taxes' enables the general government to tax the salary of a judicial officer of a State, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the States ?

"We do not say the mere circumstance of the establishment

of the judicial department, and the appointment of officers to administer the laws, being among the reserved powers of the State, disables the general government from levying the tax, as that depends upon the express power 'to lay and collect taxes,' but it shows that it is an original inherent power never parted with, and in respect to which the supremacy of that government does not exist, and is of no importance in determining the question; and further, that being an original and unreserved power, and the judicial powers appointed under it being a means or instrumentality employed to carry it into effect, the right and necessity of its unimpaired exercise, and the exemption of the officer from taxation by the general government, stand upon as solid a ground, and are maintained by principles and reasons as cogent, as those which led to the exemption of the Federal officer in *Dobbins v. The Commissioners of Erie* from taxation by the State; for, in this respect, that is, in respect to the reserved powers, the State is as sovereign and independent as the general government. And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and for the sake of self-preservation, exempt from taxation by the States, why are not those of the States depending upon their reserved powers, for like reasons, equally exempt from Federal

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taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of the government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion ?" *

The same reasoning compelled even the exemption of income derived from interest on State bonds or municipal bonds issued by the local sub-division of a State from the incidence of the tax.' In the decision which set aside the Income Tax of 1894, the Court said : "Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of \$60,000, and that the directors of the company intend to return and pay the taxes on the income so derived.

"The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers.

"As the State cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State.

"A municipal corporation is the representative of the State and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. Col-

«rfce GoUeotor v. Day, 11 Wall. Opinion of Justices, 53 N. H. 635,

113, 20 L. ed. 122. where the court said that the state

T U. S. V. Railroad Co. 17 Wall, could not tax income from U. S.

322, 332, 21 L. ed. 597, 601. See bonds.

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lector V. Day, 11 Wall. 113, 124, 20 L. ed. 122, 125 ; United States V. Eailroad Company, 17 Wall. 322, 332, 21 L. ed. 597, 601. In Collector v. Day, it was adjudged that Congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial ofScers of a State, for reasons similar to those on which it had been held in Dobbins v. Commissioners, 16 Pet. 435, 10 L. ed. 1022, that a State could not tax the salaries of officers of the United States. Mr. Justice Nelson, in delivering judgment, said: 'The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme ; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, "reserved," are as independent of the general government as that government within its sphere is independent of the States.'

"This is quoted in VanBrocklin v. Tennessee, 117 U. S. 151, 178, 29 L. ed. 845, 854, 6 Sup. Ct. Eep. 670, and the opinion continues : 'Applying the same principles, this court, in United States V. Eailroad Company, 17 Wall. 322, 21 Fed. 597, held that a municipal corporation within a State could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the State, created by the State to exercise a limited portion of its powers of

government, and therefore its revenues, like those of the State itself, were not taxable by the United States. The revenues thus adjudged to be exempt from Federal taxation were not themselves appropriated to any specific public use, nor derived from property held by the State or by the municipal corporation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income, belonging to it in its municipal character, must be so held. The reasons for exempting all the property and income of a State, or of a municipal corporation, which is a political division of the State, from Federal taxation, equally require the exemption of all the property and income of the national government from State taxation.'

"In *Mercantile Bank v. New York*, 121 U. S. 138, 162, 30

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L. ed. 895, 904, 7 Sup. Ct. Rep. 826, this court said: 'Bonds issued by the State of New York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.'

"The question in *Bonaparte v. Tax Court*, 104 U. S. 592, 26 L. ed. 845, was whether the registered public debt of one State, exempt from taxation by that State or actually taxed there, was taxable by another State when owned by a citizen of the latter, and it was held that there was no provision of the Constitution of the United States which prohibited such taxation. The States had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each.

"The law under consideration provides 'that nothing herein contained shall apply to States, counties or municipalities.' It is contended that although the property or revenues of the States or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities can be taxed. But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in *Weston v. Charleston*, 2 Pet. 449, 468, 7 L. ed. 481, 488, where he said: 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be car-

ried to an extent which shall arrest them entirely. . . . The tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution.' Applying this language to these municipal se-

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curities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution." ' Bonds issued by municipalities of the territories or the District of Columbia are not, however, exempt from taxation, for this reason, if at all. In the absence of the «xpress exemption of employees of a State or a subdivision thereof, it would be a debatable question whether their compensation was exempt, when they were not technically office-holders. It has been held, in Massachusetts, that a clerk in a post-office is not an officer of the United States and is consequently subject to a State income tax.'

Contractors with States, municipalities, or other state subdivisions, may also claim that the same reasoning exempts their profits from Federal taxation. The Supreme Court has intimated its approval of the doctrine that a State has no power to exclude from its territory a corporation engaged there in the performance of a contract with the United States.'" It might be argued that the same reasoning would conversely prevent the United States from thus impeding the performance of a contract with a State.

The act provides that "the tax shall not be imposed upon any income derived from any public utility or from the exercise of any essential governmental function accruing to any State or any political subdivision thereof." '^ It might be held that the Constitution requires an exemption of these corporations as well.

It has been said that a corporation, such as a telegraph company, which is an agent of the United States, can in all matters affecting its existence as an agent sue in a Federal court, irre-

8 Pollock V. Farmers' Loan & Trust 31 L. ed. 650, 652, 2 Inters. Com. Co. 157 U. S. 429, 583-586, 39 L. Eep. 24, 8 Sup. Ct. Rep. 737; Horn ed. 759, 820, 821, 15 Sup. Ct. Rep. Silver Mining Co. v. Neu: York State, 673. 143 U. S. 305, 317, 36 L. ed. 164, 4

9 Melchior v. Boston, 9 Met. 73. Inters. Com. Rep. 57, 12 Sup. Ct.

10 Stockton V. Baltimore R. R. Go. Rep. 403.

1 Inters. Com. Rep. 411, 32 Fed. 9, "Act of October 3, 1913, subsec-14; Pembina Consol. 8. M. & M. Go. tion G, (9).

w. Pennsylvania, 125 U. S. 181, 186,

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spective of the amount in controversy.^* It is well settled that the United States cannot tax the income of a State municipality.^* In the leading case upon the subject, the Supreme Court said, speaking through Mr. Justice Hunt:

"The power of taxation by the Federal Government upon the subjects and in the manner prescribed by the act we are considering is undoubted. There are, however, certain departments which are excepted from the general power. The right of the States to administer their own affairs through their legislative, executive and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other." "

"A municipal corporation, like the city of Baltimore, is a representative not only of the State, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the State. The State may withdraw these local powers of government at pleasure, and may, through its legislature or other appointed channels, govern the local territory as it governs the State at large. It may enlarge or contract its powers or destroy its existence. As a portion of the state in the exercise of a limited portion of the powers of the State, its revenues, like those of the State, are not subject to taxation." ^*

"We admit the proposition of the counsel, that the revenue must be municipal in its nature to entitle it to the exemption claimed. Thus, if an individual should make the city of Baltimore his agent and trustee to receive funds, and to distribute them in aid of science, literature, or the fine arts, or even for

12 Western Vmon Tel. Co. v. City 1* U. S. v. Baltimore & Ohio R. Council, 56 Fed. 419. R. Co. 17 Wall. 322, 21 L. ed. 597.

13 V. 8. V. BaZtvmore & Ohio R. 15 U. S. v. Baltimore & Ohio R. R. Co. 17 Wall. 322, 21 L. ed. 597. R. Co. 17 Wall. 322, 21 L. ed. 597.

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the relief of the destitute and infirm, it is quite possible that-

such revenues would be subject to taxation. The corporation would therein depart from its municipal character, and assume the position of a private trustee. It would occupy a place which an individual could occupy with equal propriety. It would not in that action be an auxiliary or servant of the State,, but of the individual creating the trust. There is nothing of governmental character in such a position. It is not necessary, however, to speculate upon hypothetical cases. We are clear in the opinion that the present transaction is within the range of the municipal duties of the city^ and that the tax cannot be collected." *«

This case was decided under the old law under which the interest paid by a corporation to its bondholders was taxed, and consequently the tax, although paid by the corporation,, was in fact upon the bondholder. Under the present law corporations are, however, taxed upon their profits, and the tax is, in name at least, upon the corporations, not upon the stockholders. It may, however, be claimed that the courts, in view of the constitutional prohibition against the taxation of the property of a State or governmental subdivision thereof, may look through the corporate veil, and in a case where a State or one of its subdivisions owns part of the stock in a private corporation, require that so much of the profits as represents those shares be exempt from the tax.

§ 28. Constitutionality of tax on salaries of President and Federal judges. The statute expressly exempts "the compensation of the present President of the United States during the term for which he has been elected and of the Judges of th& Supreme and inferior courts of the United States now in office.'

The Constitution provides that, "The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected ;" * and "The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a

16 V. 8. V. Baltimore & Ohio B. § 28. 1 Act of October 3, 1913,. B. Co. 17 Wall. 322, 21 L. ed. 597. subsection B.

2 Article II, § 1.

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compensation, which shall not be diminished during their continuance in office." '

Under these sections of the Constitution, the question arises whether Congress can evade the constitutional prohibition by an indirect diminution of the salary of the president and judges through a deduction which is denominated a tax. The question has never been judicially decided, but the better opinion, which

is supported by high authority, is that this cannot be done to officers who were appointed or elected before the passage of the statute. Those subsequently elected or appointed may, however, be subject to the tax if that is the intent of the statute. The former income tax acts contained no such express exemption.

At first the amount of the tax was deducted from the salaries of the president, the justices of the Supreme Court and the other Federal judges. Chief Justice Taney filed the following protest against the deduction :

"Washington, February 16, 1863.

"Sir: - I find that the act of Congress of the last session, imposing a tax of three per cent, on the salaries of all officers in the employment of the United States, has been construed, in your department, to embrace judicial officers, and the amount of the tax has been deducted from the salaries of the judges.

"The first section of the third article of the Constitution provides that 'The judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may from time to time ordain and establish. The judges of both the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office.' The act in question, as you interpret it, diminishes the compensation of every judge three per cent. ; and if it can be diminished to that extent by the name of a tax, it may, in the same way, be reduced from time to time at the pleasure of the legislature.

"The Judiciary is one of the three great departments of the Government created and established by the Constitution. Its duties and powers are especially set forth, and are of a character

8 Article, III, § 1.

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that requires it to be perfectly independent of the other departments. And in order to place it beyond the reach, and above even the suspicion, of any such influence, the power to reduce their compensation is expressly withheld from Congress and excepted from their powers of legislation.

"Language could not be more plain than that used in the Constitution. It is, moreover, one of its most important and essential provisions. For the articles which limit the powers of the legislative and executive branches of the Government, and those which provide safeguards for the protection of the citizen in his person and property, would be of little value without a judiciary to uphold and maintain them which was free from every influence, direct or indirect, that might by possibility, in times of political excitement, warp their judg-

ments.

"Upon these grounds, I regard an act of Congress, retaining in the treasury a portion of the compensation of the judges, as unconstitutional and void; and I should not have troubled you with this letter, if there was any mode by which the question could be decided in a judicial proceeding. But all the judges of the courts of the United States have an interest in the question, and could not therefore with propriety undertake to hear and decide it.

"I am, however, not willing to leave it to be inferred, from my silence, that I admit the right of the legislature to diminish, in this or any other mode, the compensation of the judges when once fixed by law ; and my silence would naturally, perhaps necessarily, be looked upon as acquiescence, on my part, in the power claimed and exercised under this act of Congress, and would be regarded as a precedent establishing the principle that the legislature may at its pleasure regulate the salaries of the judges of the courts of the United States, and may reduce their compensation whenever Congress may think proper.

"Having been honored with the highest judicial station under the Constitution, I feel it to be more especially my duty to uphold and maintain the constitutional rights of that department of the Government ; and not by any act or word of mine have it to be supposed that I acquiesce in a measure that displaces it from the independent position assigned to it by the statesmen who framed the Constitution. And in order to guard Foster Income Tax. - 7.

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against any such inference, I present to you this respectful, but firm and decided remonstrance against the authority you have exercised under this act of Congress. And request you to place this protest upon the public files of your office, as the evidence that I have done everything in my power to preserve and maintain the Judicial Department in the position and rank in the Government which the Constitution has assigned to it.

"I am, sir, very respectfully yours,

"K. B. Taney."
Hon. S. P. Chase,

Secretary of the Treasury.

The Secretary of the Treasury took no notice of the letter from Chief Justice Taney. Thereupon the Chief Justice procured the following order to be passed by the Supreme Court of the United States :

Supreme Court of the United States, December Term, 1862..
Order of the Court: Ordered, upon the request of the Chief Justice, that the following letter from him to the Secretary of

the Treasury be entered on the records of the court. 10th March, 1863.*

It was deemed unpatriotic by the Federal judges during the war, to resist the collection of this tax, even if it would not have seemed improper for them to raise such a question in time of peace, since it was impossible to obtain its decision by a disinterested tribunal. The tax was collected until 1869, when Attorney-General E. E. Hoar, formerly a justice of the Supreme Court of Massachusetts, rendered an opinion in accordance with that of Chief Justice Taney.

"Attorney-General's Office,

"October 23, 1869.

"Your letter of Sept. 30th, 1869, received, asking my opinion upon the question 'whether the law is constitutional which imposes a tax upon the salary of the President of the United States and upon the Judges of the Supreme Court.' I find no law which in express terms imposes a tax upon the salary of

i « Tyler's Life of Taney, pp. 432-435.

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either of these officers. But as several of the statutes -which provide for the assessment and collection of internal revenues contain provisions for taxing the salaries of all civil officers of the United States, and thus include in their liberal application the salaries of the President and the Judges of the Supreme Court, the question may perhaps be stated in this form: Are those statutes to be construed as authorizing the imposition of a tax upon the salaries of the officers in question? The first section of the second article of the Constitution of the United States contains this provision: 'The President shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected.' The first section of the third article* contains the provision that 'The judges both of the Supreme and inferior courts shall hold their offices during good behavior^ and shall at stated times receive a compensation which shall not be diminished during their continuance in office.'

"A specific tax by the United States upon the salary of an officer to be deducted from an amount which otherwise would by law be payable as such salary is, in my opinion, a diminution of the salary to be paid to him which in the case of the President and the judges would be prohibited by the Constitution of the United States, if the act of Congress levying the tax

were passed during the official term of the President or of the judges respectively concerning whom the question would arise.

"It was held in the case of *Dobbins v. The Commissioners of Erie Co.* 16 Pet. 435, 10 L. ed. 1022, that the compensation of an officer of the United States was not subject to taxation under State authority, because the effect of such a tax would be to diminish the compensation which the officer was by law entitled to receive. Such a tax was held to interfere with the provision made by the United States for the due execution of the power* and functions of the National Government by means of officers which it appointed and paid. In the case of the *Pacific Ins. Co.. V. Soule*, 7 Wall. 434, 19 L. ed. 95, it was decided that an income tax was an excise or duty imposed by a statute of the United States relating to internal revenue. Congress being prohibited by the Constitution from diminishing the salaries to be paid to the judges of the Supreme Court and the President during their respective terms of office, can no more do it by levying an ex-

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cise or duty upon these salaries and deducting the amount thereof from them than could a state from that of an officer of the United States under the doctrine of the case in 16 Peters Reports. The tax operates directly as a diminution of the compensation of the officer.

"I am therefore of the opinion that no income tax could be lawfully assessed and collected upon the salaries of the President or any of the judges who were in office at the time the statute imposing the tax was passed. In regard to the salary of a subsequent President or judges subsequently appointed, the constitutional objection would not arise if it were clearly the intention of the legislature that the tax should be imposed upon the officers whenever by new appointments or a new election there would be no constitutional difficulty in the application of a previously existing law. But I am of the opinion that this would not be a safe and just rule of construction. Statutes imposing taxes are in their nature temporary and subject to frequent modification and repeal. When Congress imposes a tax upon the salaries of all civil officers, this language, although general, must necessarily be construed to mean all civil officers except those whom Congress has not the constitutional power to subject to such a tax.

"As the language of the statute could have no application to the President and judges holding their offices at the time it was passed, there would seem to be sufficient reason for holding that there was no intention that it should apply to those offices.

"If it were supposed applicable to the salary of the President, the singular result would follow in this case that as the Constitution prohibits the increase as well as the diminution of his salary during his term of office, if at the time when his official term commenced his salary was subject to a deduction in the

nature of a tax, it would not be competent for Congress during his term of office by a repeal or diminution of the tax to increase the amount paid to him. So that if the law imposing an income tax were repealed, the President alone of all the citizens of this country would continue liable for its payment during the term for which it had been originally imposed, if his official term so long continued. And in the case of the judges, as the amount of income tax laid upon salary should be varied from time to time, one judge might be liable only to the

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amount of part of the income tax which the law imposed on salaries generally, and different members of the same court would be receiving different compensations.

"I think it the more reasonable view that the class of officers over which Congress has not the taxing power by the Constitution, should not be held to be embraced within the general phrase 'all salaries of civil officers' and have therefore come to the conclusion that the just construction of the law does not require or permit any deduction of an income tax from the salaries of the President or the justices of the Supreme Court.

"Very respectfully,

"Your obedient servant,

"E. K. Hoar."

Hon. Geo. O. Boutwell,

Secretary of the Treasury^

Subsequently the exemptions were allowed in accordance with this opinion.

§ 29. Constitutionality of taxation of income previously collected. It seems to be the opinion of Senator Root that so much of the tax as affects income previously received is invalid.

His argument upon the subject is as follows : "I have introduced a brief amendment to the tariff bill, which I shall ask to have referred to the Committee on Finance; but I wanted to call the Senators' attention to the precise point of the amendment. It is an amendment to the provision that the income tax shall be computed on incomes accruing from March 1 to December 31, 1913.

"I think the provision will encounter very serious question. The change I propose is to have the income for the first year computed from the passage of the act, rather than from a fixed date - March 1, 1913. "The reason why I think it would be wise to make the change is that all direct taxes must be apportioned unless they come within the amendment relating to the income tax. We can impose a tax upon incomes without appor-

6 13 Opinions of Attorney-generals, hibition against the diminution of
161. Contra, the Supreme Court of his salary during his oflScial term.
Pennsylvania has held that a tax Commissioners of Northumberland
upon a judge's salary, imposed sub- County v. Chapman, 2 Rawle, 7fl,
sequent to his appointment, is not A. D. 1829, Gibson, J.
a violation of a constitutional pro-

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tioning it because of the amendment, but we can not impose any
other direct tax without apportionment. When income is re-
ceived it immediately becomes principal. The income that was
received the 1st day of July of the present year, having been
received, became principal, and no law hereafter can tax it with-
out apportionment, any more than we can fix now the income
that was received 10 years ago without apportionment. "So if
the bill becomes a law with the provision in it that has been re-
ported from the committee you will find yourselves endeavoring
in one sentence to tax income that comes under the amendment,
and to tax past income, income received, reduced to possession,
and turned into principal before the passage of the act, and that
you can not do without apportionment.

"It is to avoid that difiiculty, which I am sure is very serious,
that I propose the amendment which I now ask 'to have referred
to the Committee on Finance.' " '

The following opinions to the contrary were presented to the
Senate of the United States :

THE INCOME TAX.

"Memorandum prepared by Representative Hull, of Tennessee,
August 5, 1913.

"The amendment proposed by Senator Root on July 18, 1913,
is based upon the theory that the proposed income-tax law can
not reach for taxation any income accruing prior to the date of
its taking effect, which was required to be taxed under the rule
of apportionment under the decision in the Pollock case, even
though such income accrued subsequent to the ratification and
promulgation of the income-tax amendment to the Constitution.
The essence of this contention is that within the meaning of the
proposed tax law the tax is limited to the particular income as a
specific fund out of which the tax is to be taken, and also that
such income becomes principal whenever received, and that
principal, therefore, can only be reached for taxation by appor-
tionment, notwithstanding the effect of the recent amendment

and the usual method of levying and measuring income taxes by
§ 29. 1 Cong. Record, p. 2788, A. D. 1913.

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the rule of uniformity as embraced in the proposed law and in former laws and practices of the United States Government.

Prior to the Pollock decision Congress had exercised the broadest power to impose the tax on incomes by the rule of uniformity, from whatsoever source derived. The great question raised in the Pollock case did not go to the power of Congress to impose the tax, but to the question of whether the power had been exercised according to the method prescribed by the Constitution — that is to say, whether a power to tax, limited only by one exception and two qualifications, was being used according to the restrictions as to the method prescribed for its exercise. The Pollock decision held that only certain classes of incomes were excise taxes and as such leviable by the rule of uniformity, while certain other classes, viz., rent of real estate, and incomes derived from invested personalty, were of such a nature that a tax laid upon the same constituted a direct tax, and which must fall under the rule of apportionment. Prior to this decision the policy of the Government and the decisions of the courts were to the effect that all taxes upon incomes being considered excise taxes might be levied under the rule of uniformity and might be measured by the income accruing during the preceding year or preceding years.

"The income-tax act of August 5, 1861, provided. that the tax should be assessed 'upon the annual income for the year preceding the 1st of January, 1862,' thus including the income that had accrued during the seven months next preceding the passage of the law. The act of July 14, 1862, required the tax to be imposed upon the income that had accrued during the previous six and one-half months of that year prior to the date of the passage of the act.

"The English act of June 28, 1853, likewise applied to all income accruing from the 5th day of the preceding April.

"In the case of Stockdale v. Insurance Co. (20 Wall., 331, 22 L. ed. 348) the Supreme Court said:

" 'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past years, can not be doubted ; much less can it be doubted that it could impose such a tax on the income of the current

_year, though part of that year had elapsed when the statute
Tvas passed. The joint resolution of July 4, . 1864, imposed a

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tax of 5 per cent, on all income of the preceding year, although,
one tax on it had already been paid; and no one doubted the
validity of the act or attempted to resist it.'

"The soundness of this language was later sustained in the
case of Patton v. Brady (184 U. S. 608, 46 L. ed. 713, 22 Sup.
Ct. Eep. 493).

"In the case of Maine v. Grand Trunk E. (142 U. S. 217-
229, 35 L. ed. 994, 3 Inters. Com. Eep. 807, 1 Sup. Ct. Eep.
121, 163) the Supreme Court suggested that income for one
year might properly be taken for the measure of all future
years.

"Again -

'unless the Constitution prohibits restrospective legislation,
the basis of the assessment of taxes may as lawfully be retro-
spective as the reverse ; that is to say, it may as well have regard
to benefits theretofore received as to those that may be assessed
thereafter.' (Cooley on Taxation, 3d ed. 492).

"Eetrospective legislation is not prohibited.

In Drexel & Co. v. Commonwealth (46 Pa. 31, at p. 40) the
Supreme Court said:

" 'It is clearly constitutional as well as expedient in levying
a tax upon profits or income to take as a measure of taxation
the profits or income of the preceding year. To tax is legal,
and to assume as a standard the transactions immediately prior
is certainly not unreasonable.'

"Additional authorities might be cited to the same effect.
As stated, these authorities only had in mind the imposition of
an income tax as an excise or indirect tax by the rule of uni-
formity, whereas it should be borne in mind that under the
Pollock decision incomes from rent of real estate and invested
personalty are direct taxes, and until the ratification of the
recent amendment could only be levied by apportionment. The
recent amendment, however, provided that Congress might im-
pose a tax on incomes without apportionment, whether consid-
ered as direct or indirect taxes. It is evident, therefore, that in
so doing the rule of uniformity must govern. The question
then arises as to whether Congress may thus impose a tax upon
all incomes from whatever source derived, whether considered
direct or indirect taxes, in the same manner in all essential
respects that it had, previous to the Pollock decision, imposed

the tax upon incomes as an excise and under the rule of uniformity. If so, it necessarily follows that the tax may be measured by all income accruing from and after the ratification of the constitutional amendment.

"Does not the very nature and purpose of a tax on incomes accord with the foregoing view ? In the broad and usual sense of tax laws the Government, for example, might impose a tax upon property according to its value by a direct and specific levy upon the property itself, and in concrete form, either real or personal ; this would be done by apportionment ; or if it was sought to impose a capitation tax, which is one upon the person solely, without any reference to his property, real or personal, this would be effected by apportionment, while, upon the other hand, a tax laid upon any business, or franchise, or employment, or income would fall under the rule of uniformity.

"The Pollock decision held the income tax invalid not on the ground that income could become capital and escape the tax, but on account of its origin ; that it was, in effect, a tax on realty and personalty. The only proper inquiry in the light of the recent amendment, therefore, is not as to the origin or disposition of the income in question, but what amount of income accrued to a taxable individual during a given period. It must follow that the account of annual income required of a citizen is for the purpose solely of ascertaining what amount of tax ought to be imposed upon him in consequence of his having made profits and collected by the Government not necessarily out of the specific income in question, but from the general property of the taxpayer as well. State v. Bell, 61 N. C. 87.

"This view refutes the theory both that income may become principal, and thereby escape taxation, and also the objection as to retrospective legislation.

"In the language of the Supreme Court Morey v. Lockwood, 8 Wall. 234, 19 L. ed. 339 :

"(The tax is payable by the person because of his income, according to its amount and without reference to the way in which it was obtained).

"The proposed measure would require no act of the citizen until the 1st of January next. It would assess and collect a tax off the individual during next year. Until the 1st day of January the citizen could not balance off against his gross profits

his losses, expenses, etc., and ascertain his net income for the preceding year. Until the close of the year the citizen could not know whether his income would be absorbed by losses, expenses,

etc., or otherwise disposed of without even being received, nor in fact could he know whether he would have any net income until he had balanced his receipts and expenditures after the end of the year. Within the meaning of the proposed tax the cumulating items of profit must necessarily remain in abeyance until the expenditures for the year are deducted therefrom at the end of the year before it could be known whether there was any sum remaining that would or could become capital.

"The framers of the Constitution prescribed two great classes of taxes. The sole practical basis for this division related to the method of their imposition, viz., those that were to be apportioned, were called direct taxes, while those to be levied by the rule of uniformity were called indirect taxes. No court has ever inquired whether a tax is direct or indirect except for the purpose of determining whether it shall be levied under the one or the other rule just stated. Income from real estate and invested personalty is now as fully exposed to the taxing power of the Government under the rule of uniformity as is income from trades, professions, etc. The inquiry is not whether profits from any source are property, but are they income. If so, they are taxable.

"The Pollock decision held that as to certain classes such profits were property and not income; but the recent amendment, in its necessary effect, revoked this doctrine and said they shall be treated as any other kind of income for the purpose of an income tax.

"Under the proposed measure income is both the subject and the measurement of the tax. The recent amendment gives Congress the power to tax all classes of income without apportionment. Certainly, then. Congress may measure the tax by the same income. The Supreme Court has held that where the power to lay a tax exists it may be measured by the income from property not in itself taxable. *Flint v. Stone Tracy Co.* 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312 ; *U. S. Express Co. v. Minn.* 223 U. S. 335, 56 L. ed. 459, 32 Sup. Ct. Rep. 211.

"The constitutional amendment simply exempts the entire tax

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to which it relates from the rule of apportionment. It then becomes utterly immaterial to inquire whether the tax is direct or indirect or as to the origin or source of the income or its disposition — the only inquiry pertinent and necessary is, What amount of net income accrued to an individual during a given taxing period? The tax is thereupon measured by the same and collected out of his general property.

"From any viewpoint it must be agreed that Congress would impose a tax with respect to the annual net income of the citizen, and the tax to be measured by such income, whether the

same or parts thereof be considered property or otherwise. Had the recent amendment been a part of the Constitution when the Pollock Case was decided there is no reason to suppose that ■even for the purpose of income taxation any class of income would have been held to be property in the taxing sense whatever its character or nature may have been considered in other ■serkses. Before the recent amendment the direct tax was considered a tax in terms on property, real or personal, whereas all other taxes related to business, privileges, franchises, etc., though measured by different methods.

"These latter taxes are taken from the general property of the citizen, just as the former, though not imposed in terms thereon. The recent amendment simply transferred certain categories of income from one of the great classes of taxes to the other, to all intents and purposes if not in name. This transfer makes all incomes conform to the tax-meaning definition of the same as prescribed by all the courts, text writers, commentators on the Constitution, and acts of Congress prior to the Pollock decision.

"Income has been defined as 'the gain which proceeds from labor, business, or property of any kind ; the profits of commerce or business.' Sims's Appeal, 44 Pa. 347 ; Parker v. North British & M. Ins. Co. 42 La. Ann. 428, 7 So. 599 ; Heyward v. Farmers' Min. Co. 42 S. C. 138, 46 Am. St. Eep. 702, 28 L.RA. 48, 19 S. E. 963, 20 S. E. 64.

•'Also, an income tax is defined as 'a. tax which relates to the product or income from property or from business pursuits.' Waring v. Savannah, 60 Ga. 93; Keed v. Louisville, 97 Ky. 394, 28 L.E.A. 480, 30 S. W. 973.

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"It is a tax upon a person in respect of his income imposed in consideration of the amount of his net profits.

" 'A tax on the yearly profits arising from property, professions, trades, and offices.' (Black's Law Dictionary.)

" 'One which relates to the product or income from property or business pursuits.' Reed v. Louisville, 97 Ky. 394, 28 L.E..A. 480, 30 S. W. 973.

"Under the general property laws of the States the taxable status of property, real and personal, relates to the date fixed by law for its assessment. The assessment, when later made, must fix its value as of this date. This may be any day during a taxable year. Eaton v. Union County ISTat. Bank, 141 Ind. 159,. 40 N. E. 693 ; Dodge v. Nevada Nat. Bank, 48 C. C. A. 626,. 109 Fed. 726.

"An income tax is assessed and collected during the year subsequent to the accrual of the income returned and by which

the tax is measured. Under a tax imposed with respect to net incomes the citizen may be required to return for the purpose of the measurement of the tax either his income for the preceding year, or his average income for a designated number of preceding years, or his estimated income for the current year.. That view is sustained by previous citations herein.

"It therefore follows that Congress at least during any period' of the present year may impose and collect a tax on all incomes-accruing subsequent to the promulgation of the recent constitutional amendment, and it is strongly probable that the constitutional amendment had the effect to empower Congress to measure the tax by all income accruing from the 1st day of January last. The power to impose the tax has existed during the entire year, and there has been no impediment to its imposition under the rule of uniformity during most of the year, and under the weight of authority in the States, together with the construction placed upon the National Constitution by the Supreme Court in the Legal Tender, and other cases, no reason appears why the tax now proposed could and should not be measured by the income accruing from the first of the year.

"Such latter provision would provide for the doing of no act prior to December 31 next which would otherwise have been done by the citizen. It would undo nothing; it would neither

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take away nor impair any vested right. State ex rel. Greenbaum V. Ehoades, 4 JStev. 313.

" 'The language of a constitutional amendment should be read in connection with the known condition of affairs out of which the occasion for its adoption may have arisen^ and then construed if there be therein any doubtful expressions, in a way, so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted.' Maxwell v. Dow, 176 U. S. 581, 44 L. ed. 597, 20 Sup. Ct. Eep. 448, 494."

"Depaetment of Justice^
"Office of the Attorney Geneeal,

"WasMngton, D. C, August 6, 1913.

"Hon. F. M. Simmons,

"United States Senate.

"My Deae Senatoe: Replying to your letter of July 30, in which you inclose an amendment offered by Senator Root to the income section of House bill 3321, together with his remarks at the time of its introduction, and asking for my views with reference to the Senator's contention, permit me to say :

"I am sending you two separate memorandums, one which Congressman Hull very kindly prepared upon my request, and the other prepared by one of the assistants in the depart-

ment. I hope they will answer your demands.

"It seems to me that the Senator's proposition is not well founded. The practice in the past, the necessity for moving along practical lines with respect to tax matters, together with the other suggestions contained in the inclosed memorandums, are adequate to overthrow his contention.

"With best wishes, faithfully, yours,

"J. C. McReynolds,

"Attorney General.

"See me. Eoot's proposal to amend income-tax: law.
[Memorandum for the Attorney General by T. M. Gordon,
July 31, 1913.]

"Mr. Eoot suggests that the income-tax law must be amended to operate only from the date of passage. His theory is that income, once accrued, becomes principal. Hence there can be no such thing as an 'income tax' on past income. Such a tax is a

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tax on principal, a direct tax, still requiring apportionment, despite the fifteenth amendment. I do not agree with Mr..

Eoot.

"The whole question turns upon what the words 'taxes upon incomes from whatever source derived' mean as used in the sixteenth amendment.

"An income tax is sui generis. It is a legal fiction, a purely metaphysical conception, very difficult to define or classify. It seems to me, however, that it must be treated in a practical sort of way, and that the definition which Mr. Root's argument assumes builds up an unduly elaborate legal fiction, unwarranted by authority and very unfortunate in its results.

"Of course Mr. Root can not have in mind that a tax to be an income tax must actually be collected, or even assessed, before income ceases to be income. Such a requirement would be wholly impossible to comply with. For example, such a requirement would render it improper to assess the tax upon income for the preceding year, as is done by this law, and as is the universal custom of income-tax laws both in this country and in England.

"Apparently Mr. Root does assume, however, that a tax can not be a 'tax upon income' unless the law levying the tax is in active operation at the precise instant that the income accrues, so that it may then seize upon the income constructively; i. e., in legal fiction. The law is conceived as a sort of invisible net

interposed between the individual and his source of income. The Federal 1 per cent, is caught, branded, and turned loose again, as it were, to be counted and collected at a later day by the assessor. Of course physical analogies can not express precisely how the legal fiction solves such difficulties as the fact that any individual's yearly income can not be known till the end of the year, or the situation of the merchant who may gain in one transaction and lose in the next; nevertheless it must be admitted that such a conception of a tax on income, though very refined and metaphysical, is intellectually possible.

"I do not think, however, that usage, as evidenced by prior laws upon the subject and by judicial decisions, has ever restricted the meaning of the words to tax laws which might be conceived to operate in such a fashion.

"I. First, as to the word 'income,' I do not think that word

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necessarily implies a specific fund from which the tax must be taken. A man who possessed no vested right to anything might properly say, 'My present income is \$5,000 a year.' If that is his 'present income,' why may he not be taxed upon it ?

"II. That leads to the significance of the word 'upon.' This word is used in such a wide variety of ways that it is very difficult to define exactly what we do mean when we say a tax 'upon' anything. Taxes, generally speaking, are really contributions from persons, who are classified for tax purposes with reference to various characteristics, as ownership of land, carrying on a certain kind of business, etc. The factor or factors with reference to which individuals are classified is usually said to be the thing 'upon' which the tax is levied. (24 Harvard Law Review, pp. 41-42). Thus Mr. Kennan, in his recent book on Income Taxation, defines an income tax as 'a tax the amount of which is determined with reference to the income of the taxpayer' (p. 9). In other words, 'upon' usually means 'with reference to,' or 'hosed upon,' or 'measured by.' And an income tax is a tax based upon income or measured by income, not carved out of a specific fund of income.

"In this sense a tax can be 'upon' a thing which a person no longer owns or a state of things which has now ceased to exist. As Mr. Cooley says (Cooley, Taxation 3d ed. pp. 492, 493, 494):

" 'Unless the Constitution prohibits retrospective legislation the basis of an assessment of taxes may as lawfully be retrospective as the reverse ; that is to say, it may as well have regard to benefits theretofore received as to those which may be assessed thereafter. *Locke v. ISTew Orleans*, 4 Wall. 172, p. 492, 18 L. ed. 334.

« <* * * j^Qj, j^ apportioning the tax between individu-

als is there any valid objection to making it on consideration of a state of things that may now have come to an end ; as where a tax is imposed on the extent of one's business for the preceding year instead of upon an estimate of the business for the year to come. *Drexel v. Commonwealth*, 46 Pa. 31 ; *People v. Gold Co.* 92 K Y. 383. * * * One may be taxed upon property which he has long ceased to own when the tax is levied' (pp. 493-494).

"*Locke V. New Orleans*, 4 Wall. 172, 18 L. ed. 334, cited

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supra, held a State statute imposing an additional tax on property according to the assessment for the previous year, and also according to the assessment for the year before that, but not exceeding the tax already imposed according to those assessments, was constitutional.

"*Drexel v. Commonwealth*, 46 Pa. 31, also relied on by Mr. Cooley, related to an income tax. The court said (p. 40) :

" 'This act clearly intended to levy a tax of 3 per cent, on the profits or income of the business and was not meant to tax capital. Profits must necessarily be the net profits of the business, and the Commonwealth was to receive of them 3 per cent. It was in fact a tax upon the income of the business in which the defendants were engaged. The English income tax and the United States income tax are based upon the incomes received in preceding years. The present United States income tax is laid upon the income of 1862, and the act of Congress of the 5th of August, 1861 (12 Stat, at L. 309, chap. 45), expressly declares that 'the tax herein provided shall be assessed upon the annual income of the persons hereinafter named, for the year next preceding the 1st of January, 1862, and the said taxes, when so assessed and made public, shall become a lien upon the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid.'

" 'It is clearly therefore perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable, particularly when we find it always adopted in exactly similar cases. The tax is graduated upon each individual upon his individual receipts.'

"In *People v. Gold Co.* 92 K Y. 383, a tax upon the franchises of corporations, based upon dividends for the year preceding the passage of the law, was upheld.

" 'The fact that the amount of the tax may in some cases be fixed by reference to the business of the company during the year does not make the act retrospective. The burden it imposes is

future and for future expenditures. It is competent for the legislature to adopt such method of valuing the franchises or

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property of corporations for the purpose of taxation as it deems proper' (pp. 390-391).

"In *Glasgow v. Eowse*, 43 Mo. 479, an additional tax on incomes, levied according to the assessment of the preceding year, was upheld. The court declared this to be 'in entire harmony with the then existing revenue law, which provided that the taxes collected for any year should be based on an assessment made for the previous year' (p. 488).

"III. As appears from the cases *supra*, the courts do not go through an elaborate fiction to prove that the income is still income at the time the tax attaches. An income tax is still an income tax whether it is levied on this year's income or last year's income or (as has actually been done in the case of professional incomes by the English income-tax statutes since earliest times) on the average income for a period of years.

"Furthermore, every one of the earlier Federal income-tax statutes and every one of the English statutes that I have examined not only based each year's tax upon the income for the preceding year, but also based the tax for the first year upon income which had already accrued before the passage of the act. It is only fair to assume that the kind of income tax to which the sixteenth amendment refers is the kind of income tax which had been called an income tax in Federal statutes and levied and collected many times theretofore.

"The Federal income-tax laws are as follows :

Act of August 5, 1861 (12 Stat, at L. 292, chap. 45) :

'The tax herein provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said tax, to wit, the year next preceding the 1st of January, 1862.' (12 Stat, at L. 309, sec. 49, chap. 45).

Act of July 1, 1862 (12 Stat, at L. 473, 474, chap. 119) :

* * * 'The duty herein provided for shall be assessed and collected upon the income for the year ending the 31st day of December next preceding the time for levying and collecting such duty; that is to say, on the 1st day of May, 1863, and in each year thereafter.'

Act of June 30, 1864 (13 Stat, at L. 223, 281, 283, chap. 173):

'And the duty herein provided for shall be assessed, col-

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lected, and paid upon the gains, profits, or income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying such duty (p. 281, sec. 116).
* * * Shall be levied on the 1st day of May' (p. 283, sec. 116).

Resolution of July 4, 1964 (13 Stat, at L. 417) :

* * * 'There shall be levied, assessed, and collected, on the 1st day of October, ISdJ/., a special income duty upon the gains, profits, or income for the year ending the 31st day of December next preceding the time herein named.'

"Act of March 2, 1867 (14 Stat, at L. 471, 478, 480, chap. 169):

'And the tax herein provided for shall be assessed, collected,, and paid upon the gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying the tax (p. 478).

"Provided, That the tax on incomes for the year 1866 shall be levied on the day this takes effect' (p. 480).

Act of July 14, 1870 (16 Stat, at L. 256, chap. 225) :

* * * 'the tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the 31st day of December next preceding the time for levying and collecting said tax, and shall be levied on the 1st day of March, 1871/

"Act of August 27, 1894 (128 Stat, at L. 553, § 27, chap. 349, U. S. Comp. Stat. 1901, p. 2260) :

'Tax to be levied January 1, 1895, on income for the year ending December 31 next preceding time of levy' (\$1 and \$, 30).

"English income-tax laws are as follows :

Act June 22, 1842 (5 and 6 Vict. c. 35) : Taxed income from April 5, 1842.

Act June 28, 1853 (16 and 17 Vict. c. 34) : Taxed income from April 5, 1853.

Since 1860 the English tax has been re-enacted annually (16 Halsbury's Laws of England, 609). The act of April 29, 191a (10 Edward VII and 1 Geo. V, c. 8, § 65), is an example, which provides

'(1) Income tax for the year beginning on the 6th day of April, 1909, shall be charged at the rate of Is. 2d.

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'(2) All such enactments as were in force on the 5th day of April, 1909, shall, subject to the provisions of this act, have full force and effect with respect to any duties of income tax hereby granted."

"IV. The economic conception of mi income tax is against Mr. Root's interpretation.

From the economist's point of view the income tax is a contribution by each individual, based upon his ability to pay, measured by his income. A man's income for the preceding year is the most natural measure of his ability. And, as we have seen above, all previous income-tax measures have been levied on that basis.

Nor would it make the tax a 'capitation' tax to consider it in this way. 'Capitation' taxes, in the constitutional sense, are poll taxes, levied upon all men equally, without regard to wealth or extrinsic circumstances. (Cooley, Taxation 3d ed. p. 28 ; Hylton V. U. S. 3 Dall. 171 ; Springer v. U. S. 102 U. S. 586, 26 L. ed. 253 ; Head Money Cases, 18 Fed. 135, 139 ; Glasgow V. Eowse, 43 Mo. 480).

It is true that in Pollock v. Farmers' Loan & Trust Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, the court stated the economic theory and expressly refused to follow it to its logical conclusion in the case of income from property, insisting upon the necessity of considering also the source whence the income was derived. (See p. 629.) But that holding does not help Mr. Root's contention. The holding was that a tax upon the income of property is a tax upon the property itself, not because the income is property, but because the tax reaches back through the income to the source from which it springs. Knowlton V. Moore, 178 U. S. 41, 82, 44 L. ed. 969, 986, 20 Sup. Ct. Rep. 749. Therefore the sixteenth amendment, which was passed with the express purpose of escaping that decision, must be held to give power to levy a direct tax on a property, at least that kind of a direct tax on property which is measured by its income. As was suggested above, if the sixteenth amendment is really designed to permit a tax on property measured by income, there is no reason why income already accrued may not be taken as the standard.

V. The usefulness of the tax as a wa/r measure.

"This was one of the reasons most persistently urged for the

adoption of the sixteenth amendment. Mr. Root's interpretation would seriously impair its effectiveness, however. How could large amounts of money be raised with any degree of quickness if Congress must wait a year for income to accrue ? And of course Mr. Root's objection would apply to an increase in the rate of taxation as well as to the original imposition of a tax. That this is a consideration of real substance is shown by the fact that the income tax of 1861, for instance, was aimed at income for the entire year of 1861, though passed on August 5 of that year. (12 Stat, at L. 292, chap. 45. And as the war proceeded it was found necessary to levy (Resolution July 4, 1864) a special income tax on income for the whole year 1863. (13 Stat, at L. 417). It would be very unfortunate if the sixteenth amendment would not permit such a war measure, and for Congress to assent to such a construction by amending the law at this time would be a contemporaneous legislative interpretation of some weight if the question ever arose hereafter.

Faithfully, Thuelow M. Gordon,

Special Assistant to the Attorney-General.

Opinion of Senator John K. Shields.

"The argument, advanced to support the contention of the Senator is predicated solely upon the assumption that profits, dividends, and other moneys, constituting an income, when received, immediately become 'principal,' or, in other words, is incorporated into the corpus of the estate of the taxpayer, and therefore not subject to direct taxation without apportionment. This involves the further assumption that the tax imposed can only be collected out of the income of the taxpayers, or, in other words, that his general estate can not be subjected to its payment.

'The question whether or not an income accrued immediately and automatically becomes principal or a part of the general estate of the owner, whether sound or unsound in economics or financial evolution, is not in my opinion material to the question involved.

But it is unsound. An income is defined to be:

'That gain which proceeds from labor, business, property, or capital of any kind, as the produce of a farm, the rent of houses, the proceeds of professional business, or money or stock fund's,

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etc. ; salary, especially the receipts of a private person or a corporation from property.'

This is the natural and obvious sense of the term, and it is so used in the constitutional amendment and in this bill. The gain, profit, or acquisition constituting the income when it accrues and is ascertained becomes an entity and property as much as a farm, bonds, corporate stocks, or other property from which it may have had its source. That it may automatically immediately become incorporated into the estate of the owner or invested thereafter to yield an income, or is spent, given away, or consumed, does not destroy the property entity of the value it had when it accrued. The fact that the property existed and was owned by the taxpayer at one time is indestructible.

I suppose the objection of the Senator goes only to computations on incomes arising from property, real and personal,, and not to those on incomes from business.

The question really presented for consideration is whether the provision of the bill for the tax for the current year is retroactive in its operation and imposes a liability for taxes before the enactment of the law, and is for this reason unconstitutional.

The constitutional amendment under which this tax in part is imposed without apportionment ordains:

'The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States and without regard to any census or enumeration.'

It is well settled that -

'The language of a constitutional amendment should be read in connection with the known condition of affairs out of which the occasion of its adoption may have arisen, and then construed, if there be therein any doubtful expressions, in a way, so far as is reasonably possible, to forward the known purpose or object for which the amendment was adopted.' Maxwell v. Dow, 176 U. S. 597, 44 L. ed. 603.

It is a part of the history of this country that much of the personal property owned by everyone, and the great accumulations of wealth in the hands of the few, had for years escaped taxation. They could not be taxed direct without apportion-

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ment, which was not deemed advisable. The income-tax law of 1894 was enacted to remedy this injustice and to make this property bear its just proportion of the expenses of the Government.

The Supreme Court of the United States held that tax, in so far as it was imposed upon incomes received from real estate

and personal property, to be a direct property tax and, being levied without apportionment, unconstitutional. The tax upon incomes which arose from other sources, and upon which an excise tax could be imposed, was not held void for that reason, but the contrary conceded. *Pollock v. Farmers' Loan & Trust Co.* 158 U. S. 618, 630, 39 L. ed. 1119, 1123, 15 Sup. Ct. Eep. 912.

The sixteenth amendment to the Constitution was proposed and adopted to authorize Congress to impose a tax like that of 1894, after which this is modeled, and which is proposed to be enacted under that power, in so far as it taxes incomes arising from real and personal property. Congress already had the power to impose a tax without apportionment on incomes arising from gains, profits, or other acquisitions in a business ordinarily called an excise tax. *Flint v. Stone Tracy Co.* 220 U. S. 107, 55 L. ed. 398, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

There are two grounds upon which, in my opinion, the tax for the current year can be sustained.

First. The Congress has general power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States, unlimited save that duties, imposts, and excises shall be uniform throughout the United States, and no capitation or other direct tax shall be laid unless in proportion to the census or enumeration, directed to be taken decennially, nor on articles exported from other States. (Constitution, Art. I, sees. 8 and

9).

The Constitution contains no provision prohibiting the Congress from imposing a tax upon property owned or business done by the taxpayer previously to the enactment of the law levying the tax. The general rule is that the Congress, within constitutional limitations, has absolute power to determine the objects of taxation and the method of the assessment of the tax.

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Cooley's Con. Lim. 737 ; *Flint v. Stone Tracy Co.* 220 U. S. 167, 55 L. ed. 420, 31 Sup. Ct. Kep. 342 ; *Weston v. City of Charleston*, 2 Pet. 466, 7 L. ed. 487.

Therefore if the bill be construed to impose the tax for current year on account of the ownership of incomes received — property owned and business done previous to the enactment of the law — it is within the power of Congress, without constitutional objection, and valid. ■

There is no constitutional prohibition of retroactive legislation which will affect this tax. *Black's Con. Law* 753 ; *Cooley's Con. Lim.* 529 ; *Satterlee v. Matthewson*, 2 Pet. 380, 7 L. ed.

458 ; Drehman v. Stifle, 8 Wall. 595, 19 L. ed. 508.

If the constitutional amendment changes or authorizes Congress to change the classification of a tax on incomes derived from property from that of a direct tax to that of an excise tax, and the tax here imposed is one of the latter class, then the provision for computing incomes before the enactment of the bill is clearly a mere method of assessment and not only allowable, but usually done in assessing excise taxes. The authorities authorizing this manner of assessment of excise taxes will be hereafter stated.

Second. The provision of the bill requiring incomes received by the taxpayer from all sources, from March 1, 1913, to be computed in ascertaining the tax to be paid for the current year is not the imposition of a retroactive tax, but the method of assessment of the tax imposed for that part of the current year after the enactment of the law, consisting in part of a property tax and in part of an excise tax, and is valid and constitutional.

It is immaterial what the tax is called. The courts will treat it according to its correct classification as ascertained by the legislative intent disclosed in the bill when construed in the light of its legislative and judicial history. I am inclined to think the tax imposed is a property tax in part and excise tax in part. It is a property tax so far as imposed upon incomes accruing to the taxpayers from real and personal property, and an excise tax so far as laid upon incomes arising from all other sources. I do not think the constitutional amendment was intended to change the classification of the tax, but merely to allow it to be imposed without apportionment.

In so far as it is a property tax, it is imposed upon the tax-

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payer as the owner of so much property - that certain portion in value of his property which he acquired as an income from real and personal property - during certain periods for the current year, from March 1 to December 31, and thereafter annually. The extent of the property - the portion of the estate of the taxpayer upon which he is taxed - is thus measured by the income received during said periods, to be ascertained and taxed as in the bill prescribed. This, under the Pollock cases, is a direct tax, but it is now authorized, without apportionment, by the constitutional amendment under which it is proposed to be enacted.

It is an excise tax so far as it is imposed on incomes from all other sources, as has been decided by the Supreme Court in many cases.

There seems to be no valid objection to imposing the two classes of taxes in the same law. This was done in the act of 1894 and not considered objectionable. The court, referring to

it in the Pollock cases, expressly stated that this point did not affect its decision. Pollock v. Farmers' Loan & T. Co. 158 U. S. 636, 39 L. ed. 1125, 16 Sup. Ct. Eep. 912.

The Congress, within constitutional limitations, has plenary power to select the objects of taxation and the methods by which the tax imposed shall be levied, assessed, and collected. It may, with proper uniformity, tax all the property of the taxpayers or only a portion or a certain kind of it. It may impose an excise tax on all business, avocations, or on part of them. It also has almost unlimited power in providing for the selection of the property to be taxed, and all necessary machinery for the assessment of the same for taxation and for the collection of the tax. These principles are elementary. Cooley's Con. Lim. 737, 739; Cooley's Taxation, vol. 1, 602-604.

In the case of Flint v. Stone Tracy Co. 220 U. S. 167, 55 L. ed. 420, 31 Sup. Ct. Eep. 342, it is said:

'We must not forget that the right to select the measure and objects of taxation devolves upon the Congress and not upon the courts, and such selections are valid unless constitutional limitations are overstepped.'

All the authorities agree that the basis of an assessment for taxation may be retrospective. Cooley on Taxation, vol. 1, p. 492.

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The same method, it is true, is here provided for assessing the property tax and the excise tax imposed, but I can see no objection to the bill on this account. It is equally applicable to both taxes and makes the machinery less complicated and easier of operation. Direct taxation by reason of the ownership of property and an excise tax upon business are merely different methods by which the same end is reached ; that is, by which the taxpayer is made to contribute out of his property to the support of the Government.

As before stated, the provision of the bill requiring the computation of incomes received by taxpayers during the periods mentioned in the bill is merely the basis for the assessment of the tax, and it is well settled that incomes received before the law is passed may be considered in ascertaining the tax to be paid for the first year.

The excise cases decided by the Supreme Court of the United States sustain these conclusions. They are directly in point in so far as the property taxed arises from incomes from business subject to an excise tax and clearly analogous where the income arises from real and personal property, both of which are to be found in this bill.

The court has held in all these cases that the tax to be col-

lected may be measured by the business done, the profits made, the dividends accrued, and the gains made for periods previous to the enactment of the law imposing the tax, in some other cases a part of the year, like the present law, and in others the year previous to that in which the law was enacted.

It is also held that where the basis fixed for the assessment is a percentage on the capital stock or business done by a corporation, and that in this way assets which are exempt from taxation and business not taxable are included in making the assessment, the validity of the tax imposed is not affected.

In *Home Ins. Co. v. N. Y.* 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593, the tax in question was imposed upon the privilege of the complainant to do business as a corporation within the State and was measured by the extent of the dividends of the corporation of the current year upon the capital stock, some two million dollars of which were invested in bonds of the United States exempt from taxation. The tax was attacked because this mode of assessing the same included the

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value of exerapt property. The court, in sustaining the tax, said:

'It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United States composing a part of the stock. The statute designates it a tax upon the 'corporate franchises or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be enacted each year. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows.'

The case of the *State of Maine v. Grand Trunk Ey. Co.* involves an excise tax levied by the State upon railroad corporations for the privilege of exercising their franchise within the State, the tax being fixed by a certain percentage of the transportation receipts of the company, including interstate and foreign commerce, for the previous year. The tax was assailed upon the ground that it was a burden upon interstate commerce and the business done in a former year. The court sustained the tax. In the opinion, amoiig other things, it is said:

'The character of the tax or its validity is not to be determined by the mode adopted in fixing its amount for any specific period or the time of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation is open to the consideration of the State in determining what may be justly exacted for the privilege. * * *

'And if the inquiry of the State as to the value of the privilege were limited to the receipts of certain past years instead of the year in which the tax is collected it is conceded that the validity of the tax would not be affected ; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as stated above, simply the means of ascertaining the value of the privilege conferred.'

In *Stockdale v. Atlantic Ins. Co.* 20 Wall. 341, 22 L. ed. 354, an excise tax assessed upon dividends declared by the

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company previously was held to be valid. Mr. Justice Miller in his opinion said :

'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, can not be doubted ; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of 5 per cent, upon all incomes of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it.'

Flint V. Stone Tracy Co. 220 U. S. 142, 55 L. ed. 410, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312 - the corporation-tax case - is the latest excise-tax case. All the cases where excise taxes have been attacked, because in the measurement or assessment of the tax property nontaxable, and profits, incomes, and business accruing previous to the passage of the law, were included and valued, are reviewed, and it is there held that the Government may use these methods in measuring or assessing the tax imposed without affecting the validity of the tax.

I think the principle controlling all these cases is the same here involved, and sustains the tax proposed to be imposed.

There is nothing in the amendment requiring the tax to be paid or collected out of the specific moneys constituting the income accruing during said periods, and what the taxpayer does with the moneys constituting his income is immaterial. It can not have the effect to relieve him of the tax imposed upon him as the owner of property of its value. This tax, like all other taxes, is a debt due to the Government, and collectible out of any of the taxpayer's property that may be found. If the law was otherwise, the payment and collection of the tax would be dependent upon the ability of the taxpayer to dispose of his income before the authorities could seize it for the payment of his just contribution to the expenses of the Government.

The statutes of a majority, if not all, of the States provide that property shall be assessed against the owners upon some certain day of the year and that transfers after that shall not affect the assessment. The owner of the property upon the day of the assessment is liable for the tax thereon according

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to the assessment made, notwithstanding the general assembly, municipal council, or other taxing power may levy the tax on a subsequent day of the year. The property of the citizens taxed for that year is here measured by that which they own on the day fixed for the assessment, and which is made as of that day. These laws have never been questioned so far as I can find.

The provisions of this bill upon this question are not different from the income-tax laws of England and those heretofore enacted in this country.

The English income tax enacted June 28, 1853, provided that the same should be operative and effective from and after April 5, 1852, and of course included incomes accruing previous to its enactment.

The income tax imposed by Congress August 5, 1861, expressly provided that —

"the tax herein provided shall be assessed upon the annual incomes of the persons hereinafter named for the year next preceding the 1st of January, 1862, and the said taxes when so assessed and made public shall become a lien upon the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid." (12 Stat, at L. 309, chap. 45).

Here the tax was imposed upon the incomes accruing between January 1, 1861, and August 5 of that year, the day of the enactment of the law.

The act of July 14, 1862, superseding the one above stated, provided for the assessment upon incomes received from and after January 1 of that year, or for a period of six months before the act was passed.

The income tax of 1894, enacted in August of that year provided for the taxation of incomes from the beginning of the current year and was attacked upon this ground. The question was not decided in the cases which reached the Supreme Court of the United States, but it was held by the Supreme Court of the District of Columbia in the case of Moore, v. Miller, decided January 23, 1895, that there was nothing in the objection. In that case Hagner, J., said :

'This provision is of the same character as those appearing in the former income acts of the United States.

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'The first act, passed on the 5th of August, 1861, declared that from and after the 1st of January, 1862, there should be levied an income tax, which should be assessed in the first instance 'upon the annual income for the year preceding the 1st of January, 1862,' thus including in return the income that had accrued during the seven months next preceding the passage of the law.

'The act of the 14th of July, 1862, which superseded the first law, declared that the tax should be levied on the 1st of May, 1863, upon the income of the preceding year ending the 31st of December, 1862, including thereby the six months and a half of the year that had expired at the time the act was passed.

'The English act of 1853, passed on the 28th of June, 1853, declared that the income tax thereby established should be operative from and after the 5th day of the preceding April.

'This authority was quoted in support of this contention, and I have been unable to discover any if it exists.

'But the very point appears to have been decided the other way in 20 Wall. 331, 22 L. ed. 351, *Stockdale v. Ins. Co.*, where Mr. Justice Miller said: 'The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past years, can not be doubted; much less can it be doubted that it could impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed. The joint resolution of July 4, 1864, imposed a tax of 5 per cent on all incomes of the previous year, although one tax on it had already been paid; and no one doubted the validity of the act or attempted to resist it'

In a Pennsylvania case, in which a tax in substance was imposed upon incomes, a similar question was presented and held not to affect the validity of the law :

'This act clearly intended to levy a tax of 3 per cent on the profits or income of the business, and was not meant to tax capital. Profits must necessarily be the net profits of the business, and the Commonwealth was to receive of them 3 per cent. It was in fact a tax upon the income of the business in which the defendants were engaged. The English income tax and the United States income tax are based upon the incomes received in

preceding yearj.. The present United States income tax is laid upon the income of 1862, and the act of Congress of the 5th of August, 1861 (12 Stat, at L. 309, chap. 45), expressly declares that the tax herein provided shall be assessed upon the annual income of the person hereinafter named, for the year next preceding the 1st of January, 1862, and the said taxes, when so assessed and made public, shall become a lien upon the property or other resources of said income for the amount of the same, with the interest and other expenses of collection until-paid.

'It is clearly, therefore, perfectly constitutional, as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable, particularly when we find it always adopted in exactly similar cases. The tax is graduated upon each individual upon his individual receipts.'

The Wisconsin income tax law went into effect July 5, 1911, but provided for taxing all incomes received during that year. The act was attacked, among other grounds, upon the contention that it was retroactive and void under the constitution of that State. The court is disposing of this question said :

'One further objection we overrule, here without comment, for the reason that it seems very unsubstantial, namely, the objection that the law is retroactive and valid, because assessed on income received during the entire year 1911, while it did not go into effect until July 15 of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously.' (Income Tax cases, 148 Wis. 456, 514, 134 K W. 673, 135 N. W. 164, Ann. Cas.. 1913A, 1147.

In Wisconsin & M. K. Co. v. Powers (191 U. S. 379, 48 L. ed. 229, 24 Sup. Ct. Eep. 107) a statute was sustained which made the income of the railway company within the States, including interstate earnings, the prima facie measure of the value of the property within the State for the purpose of taxation. In the course of the opinion the court said :

'In form the tax is a tax on 'the property and business of such-railroad corporation operated within the State,' computed upon

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certain percentages of gross income. The prima facie measure of the plaintiff's gross income is substantially that which was approved in Maine v. Grand Trunk E. Co." 142 U. S. 217, 228, 35 L. ed. 994, 995, 3 Inters. Com. Eep. 807, 12 Sup. Ct. Rep. 121, 163.

The statute of Minnesota, passed for revenue purposes in 1905, levied a property tax to be computed upon the gross receipts of corporations doing both domestic and interstate business, the last of which, of course, could not be taxed by the State, as such a tax would be a burden upon interstate commerce and in violation of the commerce clause of the Federal Constitution. The Supreme Court of the United States sustained this statute and upheld the tax. In the opinion delivered for the court by Mr. Justice Day it is said:

'Upon the whole we think the statute falls within that class where there has been exercise in good faith of a legitimate taxing power, the measure of which taxation is in part the proceeds of interstate commerce, which could not in itself be taxed and does not fall within that class of statutes uniformly condemned in this court, which show a manifest attempt to burden the conduct of interstate commerce, such power, of course, being beyond the authority of the State.' Express Co. v. Minn. 223 U. S. 335, 56 L. ed. 459, 32 Sup. Ct. Eep. 211.

These two last cases seem to be directly in point. They involved statutes imposing property taxes, measured or assessed by methods which involved in part the computation of property and incomes not within the taxing power of the State. This was but an application of the general principle that the legislature has the power to prescribe any method of assessment of property for taxation that may be deemed wise and efficient and illustrates the important distinction between the subject of taxation and the method of assessment of taxation.

I think the amendment without merit and the provision of the bill called in question constitutional." *

A similar provision in Wisconsin was held by the Supreme Court of that State to be valid. "One further objection we overrule here without comment, for the reason that it seems very

2 Cong. Record, A. D. 1913, Aug. 26, 1913, pp. 4183-4189. See Senate Doc, 171.

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unsubstantial, namely, the objection that the law is retroactive and void, because assessed on incomes received during the entire year 1911, while it did not go into effect until July 15th of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously." *

§ 30. Constitutionality of provisions concerning examination of taxpayers. The constitutionality of the sections of the Revised Statutes which apply to the collection of the income tax, have also been attacked. It has been claimed that the provisions authorizing the court to punish disobedience to the collector's summons as a contempt are not judicial, and con-

sequently cannot be vested in one of the courts of the United States; and furthermore are a denial to the taxpayer of his right to trial by a jury, which is guaranteed him by the Sixth Amendment. The provisions for the examination of the taxpayer and his books have been also criticised as a violation of the Fifth Amendment to the Constitution, by compelling a person to be a witness against himself in a case which is in its nature criminal.

The sections as amended are as follows:

"Section 31Y3 : - It shall be the duty of any person, partnership, firm, asHociation, or corporation, made liable to any duty, special tax, or otlter tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged ■with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the sever.il rates and' aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury,

8 Income Tax Cases, 148 Wis. 456, 514, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913 A, 1147.

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for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person : Provided further. That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit

in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at Foster Income Tax. - 9.

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a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies ; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

"Section 3174. - Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty." *

"Sec. 3175. - Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the District Court or to a commissioner of the Circuit Court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the

case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the sum-

§ 30. 1 U. S. Eev. Stat, section the production of corporate books to 3174 (U. S. Comp. Stat. 1901, p. aid in assessing holder of stock, see 2067). For note on power to compel 8 L.R.A. (N.S.) 788.

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mons and to punish such person for his default or disobedience." "

That Congress may grant the courts the power to make an order compelling testimony before the commissioner, or the production of books in a proper case, is established by the decision sustaining the constitutionality of the analogous provisions of the Interstate Commerce Law.' The twelfth section of that act provided that :

"For the purposes of this act the commissioner shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs^ contracts, agreements, and documents relating to any matter under investigation.

"Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commissioner, or any party to a proceeding before the commissioner, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in cases of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said commissioner (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof." *

The Circuit Court of the United States dismissed an application for an order compelling the attendance and testimony of witnesses, and the production of books before the commissioner,.

8 U. S. Rev. Stat. § 3175. For 8 Interstate Gommeree Commission'

note on contempt in refusing to pro- v. Brimson, 154 U. S. 447, 38 L. cd.

duce books and papers in response 1047, 4 Inters. Com. Rep. 545, 1*

to subpoena upon ground that they Sup. Ct. Rep. 1125.

contain private matter, see 29 L.R.A. * 26 Stat, at L. chap. 128, p. 743=
(N.S.) 716. (U. S. Comp. Stat. 1901, p. 3163).

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on the ground that this was not a controversy in law or equity, the determination of which could be vested in a court of the United States, and that consequently the section was void.* This decision was reversed upon appeal to the Supreme Court by a majority of five to three. Justices Haelan, Geay, Beown, Shieas and White voted in the affirmative; Chief Justice FULLEE and Justices Beewee and Jackson in the negative.

Mr. Justice Field, who was not present at the argument, took no part in the decision, but his opinion in the previous case of *In re Pacific Railway Commission*, 32 Fed. 267, indicates that he would have joined the minority.

The reasoning upon which the decision was based is to be found in the following extracts from the opinion of Mr. Justice Haelan :

"It is to be observed that independently of any question concerning the nature of the matter under investigation by the Commission — however legitimate or however vital to the public interests the inquiry being conducted by that body — the judgment below rests upon the broad ground that no direct proceeding to compel the attendance of a witness before the Commission, or to require him to answer questions put to him, or to compel the production of books, documents, or papers in his possession relating to the subject under examination, can be deemed a case or controversy of which, under the Constitution, a court of the United States may take cognizance, even if such proceeding be in form judicial. And the theory upon which the judgment proceeded is applicable alike to corporations and individuals, although by the established doctrine of the courts a railroad corporation may, under legislative sanction and upon making compensation, appropriate private property for the purposes of its right of way, because and only because its road is a public highway established primarily for the convenience of the people and to subserve public objects, and, therefore, subject to governmental control. *Cherokee IsTation*

B In re Interstate Commerce Com- Commission, 32 Fed. 251, 267, per mission, 53 Fed. 476, per *Gresliam*, Mr. Justice Field, Sawyer and Sa- J. See also *In re Padfic Railway bin*, JJ.

V. Kansas Eailway Co. 135 U. S. 641, 657, 34 L. ed. 295, 302, 10 Sup. Ct. Eep. 965.

"What is a case or controversy to ■which, under the Constitution, the judicial power of the United States extends ? Referring to the clause of that instrument, which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice Marshall, has said: 'This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties, of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed ,by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States. Osborn v. Bank of the United States, 9 Wheat. 738, 819, 6 L. ed. 204, 223. And in Murray v. Hoboken Co. 18 How. 272, 284, 15 L. ed. 372, 377, Mr. Justice Ctjetis, after observing that Congress cannot withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity or admiralty, nor, on the other hand, bring under judicial power a matter which, from its nature, is not a subject for judicial determination^ said: 'At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' So, in Smith v. Adams, 130 U. S. 173, 32 L. ed. 897, 9 Sup. Ct. Eep. 566, Mr. Justice Field, speaking for the court, said that the term 'case' and 'controversies' in the Constitution embraced 'the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs.'

"Testing the present proceeding by these principles, we are

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of opinion that it is one that can properly be brought under judicial cognizance.

"We have before us an act of Congress authorizing the Interstate Commerce Commission to summon witnesses and to require the production of books, papers, tariffs, contracts, agreements, and documents relating to the matter under investigation. The constitutionality of this provision, assuming it to be applicable to a matter that may be legally entrusted to an administrative body for investigation, is, we repeat, not

disputed and is beyond dispute. Upon every one, therefore, who owes allegiance to the United States, or who is within its jurisdiction, enjoying the protection that its government affords, rests an obligation to respect the national will as thus expressed in conformity with the Constitution. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one, summoned by that body to appear and to testify, the duty of appearing and testifying, and upon any one required to produce such books, papers, tariffs, contracts, agreements, and documents the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the Commission requires at his hands. These propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion. Whether the Commission is entitled to the evidence it seeks, and whether the refusal of the witness to testify or to produce books, papers, etc., in his possession, is or is not in violation of his duty or in derogation of the rights of the United States, seeking to execute a power expressly granted to Congress, are the distinct issues between that body and the witness. They are issues between the United States and those who dispute the validity of an act of Congress and seek to obstruct its enforcement. And these issues, made in the form prescribed by the act of Congress, are so presented that the judicial power is capable of acting on them.

"The question so presented is substantially, if not precisely, that which would arise if the witness was proceeded against

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by indictment under an act of Congress declaring it to be an offence against the United States for any one to refuse to testify before the Commission after being duly summoned, or to produce books, papers, etc., in his possession upon notice to do so, or imposing penalties for such refusal to testify or to produce the required books, papers, and documents. A prosecution for such offence or a proceeding by information to recover such penalties -would have as its real and ultimate object to compel obedience to the rightful orders of the Commission, while it was exerting the powers given to it by Congress. And such is the sole object of the present direct proceeding. The United States asserts its rights, under the Constitution and laws, to have these appellees answer the questions propounded to them by the Commission, and to produce specified books, papers, etc., in their possession or under their control. It insists that the evidence called for is material in the matter under investigation; that the subject of investigation is within legislative cognizance, and may be inquired of by any tribunal constituted by Congress for that purpose. The appellees deny that any such rights exist in the general government, or that

they are under a legal duty, even if such evidence be important or vital in the enforcement of the Interstate Commerce Act, to do what is required of them by the Commission. Thus has arisen a dispute involving rights or claims asserted by the respective parties to it. And the power to determine it directly, and, as between the parties, finally, must reside somewhere. It cannot be that the general government, with all the powers conferred upon it by the people of the United States, is helpless in such an emergency, and is unable to provide some method, judicial in form, and direct in its operation for the prompt and conclusive determination of this dispute.

"As the Circuit Court is competent under the law by which it was ordained and established to take jurisdiction of the parties, and as a case arises under the Constitution or laws of the United States when its decision depends upon either, why is not this proceeding judicial in form and instituted for the determination of distinct issues between the parties, as defined by formal pleadings, a case or controversy for judicial cognizance, within the meaning of the Constitution? It must be so regarded, unless, as is contended. Congress is without power to

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provide any method for enforcing the statute or compelling obedience to the lawful orders of the Commissioner, except through criminal prosecution or by civil actions to recover penalties imposed for non-compliance with such orders. But no limitation of that kind upon the power of Congress to regulate commerce among the states is justified either by the letter or the spirit of the Constitution. Any such rule of constitutional interpretation, if applied to all the grants of power made to Congress, would defeat the principal objects for which the Constitution was ordained. As the issues are so presented that the judicial power is capable of acting on them finally as between the parties before the court, we cannot adjudge that the mode prescribed for enforcing the lawful orders of the Interstate Commission is not calculated to attain the object for which Congress was given power to regulate interstate commerce. It cannot be so declared unless the incompatibility between the Constitution and the act of Congress is clear and strong. *Fletcher v. Peck*, 6 Cranch. 87, 128, 3 L. ed. 162, 175. In accomplishing the objects of a power granted to it, Congress may employ any one or all the modes that are appropriate to the end in view, taking care only that no mode employed is inconsistent with the limitations of the Constitution.

"We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be vested with, a general power of making an inquiry into the private affairs of the citizen. *Kilbourn v. Thompson*, 103 U. S. 168, 190, 26 L. ed. 377, 386. We said in *Boyd v.*

United States, 116 U. S. 616, 630, 29 L. ed. 746, 751, 6 Sup. Ct. Rep. 524 — and it cannot be too often repeated, — that the principles that embody the essence of the constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice Field, In re Pacific Eailway Commission, 32 Fed. 241, 250, of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from as-

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sault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value."

"Without the aid of judicial process of some kind, the regulations that Congress may establish in respect to interstate commerce cannot be adequately or efficiently enforced. One mode, as already suggested, — the validity of which is not questioned, — of compelling a witness to testify before the Interstate Commerce Commission, to answer questions propounded to him relating to the matter under investigation and which the law makes it his duty to answer, and to produce books, papers, etc., is to make his refusal to appear and answer, or to produce the documentary evidence called for, an offence against the United States punishable by fine or imprisonment. A criminal prosecution of the witness under such a statute, it is conceded, would be a case or controversy within the meaning of the Constitution, of which a court of the United States could take jurisdiction. Another mode would be to proceed by information to recover any penalty imposed by the statute. A proceeding of that character, it is also conceded, would be a case or controversy of which a court of the United States could take cognizance. If, however, Congress, in its wisdom, authorizes the Commission to bring before a court of the United States for determination the issues between it and a witness, that mode of enforcing the act of Congress, and of compelling the witness to perform his duty, is said not to be judicial, and is beyond the power of Congress to prescribe.

"We cannot assent to any view of the Constitution that concedes the power of Congress to accomplish a named result, indirectly, by particular forms of judicial procedure, but denies its power to accomplish the same result, directly, and by a different proceeding judicial in form. We could not do so without denying to Congress the broad discretion with which it is invested by the Constitution of employing all or any of the means that are appropriate or plainly adapted to an end which has unquestioned power to accomplish, namely, the protection

8 Interstate Commerce Commission L. ed. 1056-1058, 4 Inters. Com. V. Brimson,]54 U. S. pp. 474-479, 38 Rep. 545, 14 Sup. Ct. Rep. 1125.

of interstate commerce against improper burdens and discriminations." "

"The present proceeding is not merely ancillary and advisory.⁷ It is not, as in Gordon's case,⁸ one in which the United States seeks from the Circuit Court of the United States an opinion that 'would remain a dead letter, and without any operation upon the rights of the parties.' The proceeding is one for determining rights arising out of specified matters in dispute that concern both the general public and the individual defendants. It is one in which a judgment may be rendered that will be conclusive upon the parties until reversed by this court. And that judgment may be enforced by the process of the Circuit Court. Is it not clear that there are here parties on each side of a dispute involving grave questions of legal rights, that their respective positions are defined by pleadings, and that the customary forms of judicial procedure have been pursued? The performance of the duty which, according to the contention of the government, rests upon the defendants, cannot be directly enforced except by judicial process. One of the functions of a court is to compel a party to perform a duty which the law requires at his hands. If it be adjudged that the defendants are, in law, obliged to do what they have refused to do, that determination will not be merely ancillary and advisory, but, in the words of Sanborn's case, will be a 'final and indisputable basis of action,' as between the Commission and the defendants, and will furnish a precedent in all similar cases. It will be as much a judgment that may be carried into effect by judicial process as one for money, or for the recovery of property, or a judgment in mandamus commanding the performance of an act or duty which the law requires to be performed, or a judgment prohibiting the doing of something which the law will not sanction. It is none the less the judgment of a judicial tribunal dealing with questions judicial in their nature, and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution.

¹ Interstate Commerce Commission L. ed. 1060, 4 Inters. Com. Rep. 545, V. Brimson, 154 U. S. 485, 486, 38 14 Sup. Ct. Rep. 1125.

⁸ Gordon v. V. S., 117 U. S. 697.

"This view is illustrated by the case of Feng Tue Ting v. United States, 149 U. S. 698, 728, 37 L. ed. 905, 918, 13 Sup. Ct. Rep. 1016, which arose under the act of May 5, 1892, c. 160, prohibiting the coming of Chinese persons into the United States. The act provided for the arrest and removal from the

United States of any person of Chinese descent unlawfully within this country, unless such person shall establish, by affirmative proof, to the satisfaction of a justice, judge, or commissioner of the United States before whom he might be brought and tried, his lawful right to remain in the United States. It also authorized the arrest of such person by any customs official, collector of internal revenue, or United States marshal, and taken before a United States judge. This court said : 'When, in the form prescribed by law, the executive officer, acting in behalf of the United States, brings the Chinese laborer before the judge, in order that he may be heard, and the facts upon which depends his right to remain in the country be decided, a case is duly submitted to the judicial power; for here are all the elements of a civil case - a complainant, defendant, and a judge - uciur, reus et iudex. 3 Bl. Com. 25 ; Osborn v. Bank of the United States, 9 Wheat. 738, 819, 6 L. ed. 204, 223. No formal complaint or pleadings are required, and the want of them does not affect the authority of the judge or the validity of the statute.'

"Another suggestion thrown out in argument against the validity of the twelfth section of the Interstate Commerce Act, in the particular adverted to, is that the defendants are not accorded a right of trial by jury. If, as we have endeavored to show, this proceeding makes a case or controversy within the judicial power of the United States, the issue whether the defendants are under a duty to answer the questions propounded to them, and to produce the books, papers, documents, etc., called for, is manifestly not one for the determination of a jury. The issue presented is not one of fact, but of law exclusively. In such a case, the defendant is no more entitled to a jury than is a defendant in a proceeding by mandamus to compel him, as an officer, to perform a ministerial duty. Of course, the question of punishing the defendants for contempt could not arise before the Commission ; for, in a judicial sense, there is no such thing as contempt of a subordinate adminis-

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trative body. ISTo question of contempt could arise until the issue of law, in the Circuit Court, is determined adversely to the defendants and they refuse to obey, not the order of the commission, but the final order of the court. And, in matters of contempt, a jury is not required by 'due process of law.' From the very nature of their institution, and that their lawful judgments may be respected and enforced, the courts of the United States possess the power to punish for contempt. And this inherent power is recognized and enforced by a statute expressly authorizing such courts to punish contempts of their authority when manifested by disobedience of their lawful writs, process, orders, rules, decrees, or commands.^ Surely it cannot be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable, of right, by a jury.

"We are of opinion that a judgment of the Circuit Court of the United States determining the issues presented by the petition of the Interstate Commerce Commission, and by the answers of the appellees, will be a legitimate exertion of judicial authority in a case of controversy to which, by the Constitution, the judicial power of the United States extends. A final order by that court dismissing the petition of the Commission, or requiring the appellees to answer the questions propounded to them, and to produce the books, papers, etc., called for, will be a determination of questions upon which a court of the United States is capable of acting and which may be enforced by judicial process." ^^

Mr. Justice Brewer delivered the following strong dissenting opinion with the concurrence of the Chief Justice and Mr. Justice Jackson.

"I agree as to the power of the United States over interstate-commerce, but that throws no more light on the real question involved herein than an inquiry into the power of Congress to'

9 Eev. Stat. § 725, 1 Stat. 83, chap. L. ed. 405, 408, 9 Sup. Ct. Eep. 77 ;

20, 4 Stat. 487, chap. 99 (U. S. Cartwright's Case, 114 Mass. 230,

Comp. Stat. 1901, p. 583) ; United 238 ; Foster's Fed. Pr. 5th ed. §§.

States V. Hudson, 7 Cranch, 32, 3 428-437.

L. ed. 259 ; Anderson v. Dunn, 6 1" Interstate Commerce Commis-

Wheat. 204, 227, 5 L. ed. 242, 247; sion v. Brimson, 154 U. S. 487-489,

Eae parte Robinson, 19 Wall. 505, 38 L. ed. 1060, 1061, 4 inters. Com.

510, 22 L. ed. 205, 207; Ex parte Eep. 45, 14 Sup. Ct. Eep. 1125.

Terry, 128 U. S. 289, 302, 303, 32

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enact laws would upon the question determined in Kilbourn v. Thompson, 103 U. S. 168, 26 L. ed. 377, of the right of the House of Eepresentatives to punish as for contempt one who refused to disclose the business of a real estate partnership of which he was a member. The power of Congress to use all reasonable and proper means for exercising its control over interstate commerce carries with it no right to break down the barriers between judicial and administrative duties, or to make courts the mere agents to assist an administrative body in the prosecution of its inquiries. For, if the power exists, as is affirmed by this decision, it carries with it the power to make courts the mere assistants of every administrative board or executive officer in the pursuit of any information desired or in the execution of any duties imposed. It informs Congress that the only mistake it made in the Kilbourn case was in itself

attempting to punish for contempt, and that hereafter the same result can be accomplished by an act requiring the courts to punish for contempt those who refuse to answer questions put by either house, or any committee thereof.

"It must be borne in mind that this is purely and solely a proceeding for contempt. No action is pending in the court to enforce a right or redress a wrong, public or private. No inquiry is being carried on in it with a view to the punishment of crime, nothing sought to be done for the perpetration of testimony or in aid of any judicial proceeding. The delinquent is punished for a contempt of court in refusing to testify before a commission in aid of an investigation carried on by such commission. What is this power vested in courts of punishment for contempt, and for what purpose is it vested? It is a power of summary punishment and existing to enable the courts to exercise their judicial duties. 'Contempt of court is a specific criminal offense.' *New Orleans v. New York Mail SS. Co.* 20 Wall. 392, 22 L. ed. 357. In *Anderson v. Dunn*, 6 Wheat. 204, 227, 5 L. ed. 242, 247, it was said that 'Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect and decorum in their presence and submission to their lawful mandates.' So in *Ex parte Robinson*, 19 Wall. 505, 510, 22 L. ed. 205, 207: 'The power to punish for contempts is inherent in all courts; its existence is essential to the preser-

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vation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.' And in *Ee Cooper*, 32 Vt. 253, 257 r 'The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute but arising from necessity; implied because it is necessary to the exercise of all other powers.'

"A contempt presupposes some act derogatory to the power and authority of the court. But before this proceeding was initiated the only authority disregarded was that of the commission. The court treats such acts derogatory to the powers of the commission as derogatory to its own, and punishes, as for a contempt of its own authority, one who disobeys the order of the commission. It is no sound answer to say that the court orders the witness to testify and punishes for disobedience of that order. The real wrong is in not testifying before the commission, and that is the ground of the punishment. Otherwise any disregard of any duty can be treated as a contempt of court and punished as such. It will be sufficient to cite the delinquent and order his punishment as for a contempt of court unless he discharges that duty. His failure to obey the order of the court is only the nominal, while the failure to

discharge the prior duty is the real ground of punishment. No forms of statement can change the substantial fact that the inherent power of courts to punish for contempt is exercised, not to preserve the authority of the court, not in aid of proceedings carried on in them, but to aid a merely administrative body, and to compel obedience to its requirements. It makes the courts the mere assistants of a commission.

"It is said that this proceeding is substantially, if not precisely, similar to that which would arise if Congress had passed an act imposing penalties on parties refusing to testify before a commission and a proceeding was commenced to recover such penalties. But surely the differences are vital. If such proceeding was a criminal prosecution, defendants would have the constitutional guarantee of a trial by jury, and this, too, in an action at law if the amount of the penalty exceeded \$20. By

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making it a proceeding for contempt, these constitutional protections are evaded. Further, there is no penalty prescribed. Eefusal to answer is not made an offense, misdemeanor, or felony.

"Suppose a law was enacted making criminal the refusal to answer questions put by a commission (and a statute would be necessary before such refusal could be adjudged criminal, for there are no common-law offenses against the United States—United States v. Eaton, 144 U. S. 6YT, 36 L. ed. 591, 12 Sup. Ct. Eep. 764), would it not be necessary that the statute define the questions, or at least the scope of the questions to be asked? Would not an act be void for indefiniteness and lack of certainty which simply made criminal the refusal to answered relevant questions in any proper investigation carried on before a commission? Would it not be like the famous Chinese statute:

" 'Whoever is guilty of improper conduct, and of such as is contrary to the spirit of the laws, though not a breach of any specific part of it, shall be punished at least forty blows; and when the impropriety is of a serious nature, with eighty blows.'

"Could it be left to the commission to select the matter of investigation, determine the scope of the inquiry, and thus, as it were, create the crime?

"Can all these difficulties be avoided by bringing the refusal to testify before a commission within the reach of the com-

prehensive inherent power of the courts to preserve their authority by proceedings for contempt?

"But again, it is said that the act of Congress imposes upon all persons and corporations engaged in interstate commerce a duty to answer every proper question which the commission may see fit to ask, and that a refusal to answer constitutes a refusal to discharge a duty upon rightful demand. It is true that authority is conferred upon the commission to obtain information, but the act does not impose the duty to furnish it upon all persons interested in interstate commerce; and Congress cannot invest the commission with discretionary power to create or not create a duty. If, when a question is asked, a duty is established, then the court would have no power to do anything except to enforce the act of the commission, if valid, or

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punish its violation without inquiry, which, as has been stated, would make the court the mere ministerial agent of the commission. If the duty is not established, then the court is called upon to take part in a mere inquiry as to whether it would be lawful or expedient that the duty be established. It is not pretended that the court can take cognizance of the whole investigation on petition, and this application is not a part of any judicial proceeding, nor could the order adjudicate anything. It is clear that the duty, if it exists at all, is a political and not a judicial duty. Would mandamus lie to compel the discharge of this duty? Yet mandamus is the recognized proceeding for the enforcement of a duty.

"It may be that it is the duty of every citizen to give information to the commission when demanded, but it is no more a duty than it is to avoid murder or other crimes; to lead a life of social purity; to avoid fraud in business transactions, or neglect of other duties of good citizenship. Will it be pretended that these obligations can be enforced by the courts through proceedings as for contempt?

"To say that there is a case, something that calls for judicial action, because there are parties on the one side or on the other, is a breadth of definition hitherto unrecognized. Every effort at administrative or executive action, which is not voluntarily assented to by those whom it affects creates a dispute between parties. Can it be that every such dispute justifies an appeal to the courts, and presents a case for judicial action? If so, there is nothing which any administrative body or executive officer shall attempt to do which cannot be carried into the courts, and every failure to comply with the orders of such body or officer makes the delinquent subject to punishment by the process of contempt. Hitherto the power to punish for contempt has been regarded as a power lodged in judges and courts to compel obedience to their orders, decrees, and judgments, and to support their authority.

"This is something more important than a mere question of the form of procedure. It goes to the essential differences between judicial and legislative action. If this power of the courts can be invoked to aid the inquiries of any administrative body, or enforce the orders of any executive officer, why may not the power to punish for contempt be vested directly in the

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administrative board or in the executive officer? Why call in the court to act as a mere tool? If the interstate commerce commission can rightfully invoke the power of the courts to punish as for contempt those who refuse to answer their questions, why may not like power be given to any prosecuting attorney, and he be authorized to summon witnesses, those for as well as those against the government, and in advance compel them, through the agency of the courts, to disclose all the evidence they can give on any expected trial? If these appellees have committed crime, punishment therefor comes only through the courts, and by the recognized procedure of information or indictment. They cannot be tried by the commission for any act done.

"One often declared difference between judicial and legislative power is that the former determines the rightfulness of acts done; the latter prescribes the rule for acts to be done. The one construes what has been; the other determines what shall be. As said in Cooley's Constitutional Limitations, side page 92:

" 'In fine the law is applied by the one, and made by the other. To do the first, therefore, - to compare the claims of parties with the law of the land before established, - is in its nature a judicial act. But to do the last - to pass new rules for the regulation of new controversies - is in its nature a legislative act; and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct;" because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated.'

"So, for whatever the appellees have done in the past, whether they have violated any law of the land or not, an inquiry is to be made in and by the courts. The judicial power cannot be invoked to sustain an investigation into past conduct which, when disclosed, may or may not be at the will of an administrative board or executive officer presented for judicial consideration or action. It is not meant to be affirmed that no inquiry can be made into past conduct or actions except through the power and processes of the courts. On the contrary, the full power of legislative or executive departments to inquire into what has been is conceded. But if designed to aid legisla-

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tive or executive action it must be by legislative or executive proceedings. Can the courts be turned into commissions of inquiry in aid of legislative action?

"In short, and to sum it up in a word: If these appellees have violated any law their punishment should be sought in the ordinary way, by prosecution therefor in the courts. If they have violated no law, and the simple purpose is to elicit information for the guidance of the commission or the legislature, let that information be sought by the ordinary processes of legislative or administrative bodies.

"Take a familiar illustration : Once in ten years a census is ordered by authority of Congress, and the scope of that census, constantly enlarged, is to elicit from the citizens of the United States information as to a variety of topics. No thought of punishment for past misdeeds enters into such an inquiry. Information, and that only, is sought. It is unquestionably the duty of every citizen to respond to the inquiries made by the census officers and furnish the information desired. Can it be that courts can be authorized to make the refusal of a citizen to furnish any such desired information a contempt of their authority and to be punished as such ? There is no question of the lawful power of Congress to elicit this information; possibly none as to its power to provide that a refusal to give the information shall be deemed a misdemeanor and prosecuted and punished as such. But it seems to me to obliterate all the historic distinction between judicial and legislative or administrative proceedings to say that the courts can be called upon to punish as for a contempt of their authority a mere refusal to respond to this administrative inquiry as to facts.

"This question was fully considered by Mr. Justice Field, while holding the Circuit Court, *Ee Pacific K. Com.* 32 Fed. 251, and the power of Congress to make the courts the mere assistants of an investigating committee was most emphatically denied.

"I am authorized to say that the Chief Justice and Mr. Justice Jackson concur in the views herein expressed." **

On account of the division in the Supreme Court upon the

ii *Interstate Commerce Commission v. Brim,son*, 155 U. S. 1, 39 L. ed. 49, 15 Sup. Ct. Eep. 19.

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question, it is possible that the point might be reconsidered. The Interstate Commerce Act is, however, in this respect, far different from the Revised Statutes regulating examinations under the Income Tax. By the Interstate Commerce Act, upon

the failure of a witness to obey a subpoena, application is made to the court by the commission, through the district attorney, for an order directing the appearance of the witness. This order is not granted until the witness has had an opportunity to answer setting up his objections and a trial of the issue thus raised. It is not until after disobedience to the court that the witness may be punished for a contempt. On the other hand, section 3175 of the Revised Statutes of the United States provides that an attachment may be issued by the court, as for a contempt upon the disobedience of a taxpayer to a summons issued by the collector. Upon the return of that attachment with the body of the taxpayer, the court is directed to hear the case, "and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience." If this statute be construed in accordance with its apparent meaning, to authorize the court to punish a party for contempt in disobedience to the summons of the collector, and not to authorize the court to enter an order, directing the appearance and testimony of the taxpayer, and subsequently thereto, to punish the taxpayer for disobedience of the order, not for disobedience of the summons, it might be held to be unconstitutional as impairing the right of the taxpayer to trial by jury for the offense of disobeying the collector's summons, as well as for other reasons. Under the old act, the question was never brought to the Supreme Court of the United States. It was held, that notwithstanding the language of the statute, directing the issue of an attachment upon proof by the collector of disobedience to the summons, it was the better practice to proceed by an order to show cause. *^ Other decisions hold the act constitutional.^'

12 /» re Chadimck, Lowell, 439, Fed. Cas. No. 11,097; Matter of infra. Meador, 1 Abb. U. S. 317, 2 Am.

13 See Be Phillips, 10 Int. Ev. Law Times, 140, Fed. Cas. No. 9,375 ; Eec. 107, 3 Am. Law Times, 154, 8tamvx>od v. Green, 2 Am. Law

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The question, however, deserves, and will undoubtedly receive, the careful consideration of the Supreme Court when brought before it by means of a writ of habeas corpus, or otherwise.

§ 31. Constitutionality of the grant of power to examine books of taxpayers. A further question arises concerning the power conferred upon the collector to examine a taxpayer and the latter's books of account in case of a failure to render a list or return. The Revised Statutes as amended in the Act of October 3, 1913, provide, "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be

absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies ; and when the person intended to be

Times, 133, Fed. Cas. No. 1d,301j v. Fordyce, 13 Int. Rev. Eec. 77,
Perry v. Newsome, 10 Int. Rev. Eec. Fed. Cas. No. 13,300.
■20, Fed. Cas. No. 11,009; Stanwood

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summoned does not reside and can not be found -within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned." *

The act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000.*

The object of such examination is consequently to ascertain whether the examined party is liable to a penalty for failing,

to make a return; that is, to a punishment for a violation of the law. It has been held that "suits for penalties and forfeitures incurred by the commission of offenses against the law[^] are of this quasi-criminal nature ; we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution, and of that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself; and we are further of opinion that a compulsory production of the private books and papers of the owner of goods sought to be forfeited in such a suit is compelling him to be a witness against himself, within the meaning of the Fifth Amendment to the Constitution, and is the equivalent of a search and seizure – and an unreasonable search and seizure – within the meaning of the Fourth Amendment." ' "

A section of a New York statute imposing a tax upon transfers of shares of stock of corporation was held to be unconstitutional because it made it criminal for a stockbroker to refuse to permit the Comptroller to inspect his books to ascertain what transfers had been made upon which the tax had not been paid;[^]

§ 31. U. S. Rev. Stat. § 3173, 634, 635, 29 L. ed. 752, 753, 6 Sup.

U. S. Comp. Stat. 1901, p. 2065, as Ct. Rep. 524; see also State of Texas amended by Act of Oct. 3, 1913, Sub- v. Day Land & Cattle Co. 41 Fed.

section I. See also U. S. Rev. Stat. 228, 230; State of Iowa v. Chicago

§ 3176. B d Q. B. Co. 3 L.R.A. 554, 37 Fed.

z Subsection F. 497, 500 ; United States v. Denicke[^]

s Boyd V. United States, 116 U. S. 35 Fed. 407, 410.

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for the purpose of procuring information to base an action for the recovery of the tax and any penalty thereby incurred.*

§ 32. Constitutionality of distress proceedings. The provisions of the Revised Statutes authorizing a collection of taxes by distraint and sale * have been held constitutional.* The Supreme Court said, speaking through Mr. Justice

SWATNE :

"The proceedings of the collector were not in conflict with the Amendment to the Constitution which declares that no person shall be deprived of life, or property, without 'due process of law.' The power to distraint personal property for the payment of taxes is almost as old as the common law, Cooley, Tax. 302. The Constitution gives to Congress the power 'To lay and collect taxes, duties, imposts and excises. Except as to exports, no limit to the exercise of the power is

prescribed. In *McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579, Chief Justice Marshall said, 'The power to tax involves the power to destroy.' Why is it not competent for Congress to apply to realty, as well as personalty, the power to distrain and sell when necessary to enforce the payment of a tax? It is only the further legitimate exercise of the same power for the same purpose. In *Murray v. Hoboken L. Co.* 18 How. 274, 15 L. ed. 373, this court held that an act of Congress authorizing a warrant to issue, without oath, against a public debtor, for the seizure of his property, was valid; that the warrant was conclusive evidence of the facts recited in it, and that the proceeding was 'due process of law,' in that case. See also, *De Treville v. Smalls*, 98 U. S. 517, 25 L. ed. 174; *Sherry v. McKinley*, 99 U. S. 496, 25 L. ed. 330; *Miller v. U. S.* 11 Wall. 268, 20 L. ed. 135; *Tyler v. Defrees*, 11 Wall. 331, 20 L. ed. 161.

^The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreason. If the laws here in question involved

4 *People ex rel. Ferguson v. Be(w-* § 32. 1 U. S. Rev. Stat. §§ 3187, don, 197 N. Y. 236, 243, 27 L.K.A. 3192, U. S. Comp. Stat. 1901, pp. (N.S.) 141, 134 Am. St. Rep. 871, 2073, 2075.

10 N. K. 829. See *Rolson v. Doyle*, » *Springer v. V.* 8. 102 U. S. 586, 191 111. 566, 61 N. E. 435. 26 L. ed. 253.

§ 32] DISTRESS PROCEEDINGS. 151

any wrong or unnecessary harshness, it was for Congress, or the people who make congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the Government." '

S *Springer v.* 17. 8. 102 U. S. 580, 26 L. ed. 253.

CHAPTER III.

INCIDENCE OF THE TAX AND EXEMPTION OF TERRITORY AND PERSONS FROM THE SAME.

§ 33. The nature of the tax. The incidence of the tax is ordinarily upon the recipients of the income affected. In a large number of cases, however, it falls directly upon property by compelling the payment of the tax by debtors, collecting agents and persons acting in a fiduciary capacity, and authorizing their deduction of the same from the amount of income paid to its ultimate recipient.^

§ 34. Incidence of the tax with respect to territory and places exempted from the same. The tax applies to all citizens of the United States, wherever resident, to all residents of the United States irrespective of their citizenship, to the income of all property owned and of every business, trade or profession carried on, in the United States by persons residing elsewhere.' It is levied in Alaska, the District of Columbia, Porto Eico and the Philippine Islands.^ But it is "provided that the administration of the law and the collection of the taxes imposed in Porto Eico and the Philippine Islands shall be by the appropriate internal revenue officers of those governments, and all revenues collected in Porto Eico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively." * The Act expressly directs : "That the word 'State' or 'United States' when used in this section shall be construed to include any Territory, Alaska,

§ 33. lAn interesting metaplyysi- and was reprinted with a few cal discussion of the nature and in- changes in §§ 17 and 18 of the first cidence of the tax with respect to edition of the present work, property, written by Mr. Everett V. § 34. l Act of October 3, 1913> Abbot, of the New York bar, is to Sec. II, Subsection A, subd. 1. be found in Foster and Abbot on the 2 Hid. Subsections H and N. Income Tax of 1894, §§ 21 and 22, i Ibid. M.

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§ 35] WITH EESPECT TO PERSONS. 153.

the District of Columbia, Porto Eico, and the Philippine Islands, when such construction is necessary to carry out its provisions." * Although there might be ground for argument that the phrase "any Territory" applies to the Hawaiian Islands, it was the evident intention of Congress that the residents of Hawaii, at least when not citizens of the United States,, are exempt from the tax, for the reason that the Legislature of Hawaii has imposed an Income Tax upon all residents of that territory.*

§ 35. Incidence of the tax with respect to persons. Th& statute provides "that there shall be levied, assessed, collected and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every

business, trade or profession carried on in the United States-
by persons residing elsewhere." ^

*nid. H. of expatriation as "the natural and
5 Hawaii Law of April 30, 1901, inherent right of all people, indis-
Session of 1901, Act 20, quoted in penable to the enjoyment of the
full, infra, Part V. rights of life, liberty, and the pur-
§ 35. lAct of Oct. 3, 1913, II, suit of happiness." U. S. Rev. Stat.
Subsec. A The result of the enact- § jggg^ u. S. Comp. Stat. 1901, p.
ment has been to make a number of j269, 1 Fed. Stat. Anno. 788,
Americans, resident abroad change p^^^^,^ ^^ ^ode, § 1590. The Act
their citizenship to that oi the coun- „. A/r„>„i, o mnT -j .«i7i
tries of their residence. According °^ ^^"af 2, 1907, provides: 'When
to the N. y. Times of March 8, any naturalized citizen shall have-
1914, five Americana, rPiideiit in Lon- resided for two years m the foreign
don, renounced their citizenship state from which he came, or for five
during February, 1914. These were years m any other foreign state-
David Albert Seligman, Robert it shall be presumed that he has
James Wilson, Max Rink, Philip ceased to be an American citizen,
Augustus Lange and Jeannie Baikie and the place of his general abode
Clarke. That such would be the shall be deemed his place of resi-
result of the income tax of 1894 dence during said years: Provided,
was prophesied by Senator Morrill however, That such presumption
(Cong. Globe 1st Sess. 38th Cong, may be overcome on the presenta-
1863-1864, p. 1877, col. 2). The Re- tion of satisfactory evidence to a
vised Statutes recognize the right diplomatic or consular officer of the-

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INCIDENCE OF THE TAX.

[§ 35

Under that section four possible cases may arise. Two are
of citizens, with reference to their residence or nonresidence,
and two are of aliens, with reference likewise to their resi-
dence or nonresidence. There is no question as to the first

United States, under such rules and
regulations as the Department of
State may prescribe: And provided
also, That no American citizen shall
be allowed to expatriate himself
when this country is at war." 34
Stat, at L. 1228, chap. 2534, U. S.
Comp. Stat. Supp. 1911, p. 490;
Pierce's Fed. Code, § 1594. The

following letter has been sent by the Secretary of State to the diplomatic service.

Department of State, Washington,
D. C, March 15, 1914.

To THE AMERICAN DIPLOMATIC AND

CONSULAR OFFICERS (Including

Consular Agents).

Gentlemen :

The Department has received several inquiries concerning the payment of the income tax under the provision of Section 2 of the Act of October 3, 1913, by persons residing abroad who claim American citizenship. These inquiries involve particularly two questions : (1) Whether a naturalized American citizen who has brought upon himself the presumption of expatriation, under the provision of the second paragraph of Section 2 of the Act of March 2, 1907, by protracted residence abroad, and has failed to overcome such presumption under the established rules is required to pay the income tax as an American citizen, and (2) whether a naturalized American citizen residing abroad can overcome the presumption of expatriation by payment of the income tax.

The question as to liability of a particular person to pay the income tax must be determined not by this Department but by the Treasury Department, under which the income tax law is administered. Persons making inquiry concerning this point should, therefore, be ad-

vised to apply to the Treasury Department for information.

With reference to the second inquiry mentioned above your attention is called to the fact that naturalized citizens of the United States who have brought upon themselves

the presumption of expatriation, under the provision of the second paragraph of Section 2 of the Act of March 2, 1907, by protracted residence abroad, may overcome such presumption only upon presenting "satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe." The Department has not prescribed a rule that the presumption of expatriation arising under the law mentioned may be overcome by showing that the person concerned has paid, or is ready to pay, the income tax of the United States. However, if a person against whom the presumption of expatriation has arisen presents, in connection with an application for a passport or for registration in a consulate or for actual protection, evidence that he has paid the income tax, this fact will receive due consideration in connection with other evidence submitted to overcome the presumption of expatriation under the established rules, and particularly with regard to the question of the intent to return to this country to reside. The payment of the income tax will also be duly considered in deciding the question of the right to the continued protection of this Government in cases of native American citizens who have resided abroad for a period so long that the natural presumption may be held to have arisen that they have abandoned this country. — I am, Gentlemen, Your obedient Servant,
W. J. Bryan.

§ 36] RESIDING IN UNITED STATES. 155

tivo, that the whole income of every citizen whether residing at home or abroad is taxed ; it is so specifically provided in the act. Similarly, it is expressly provided in the act that every person residing in the United States shall pay a tax upon all his income, from whatever source derived, which without question includes all resident aliens. Whatever, therefore, the power of Congress may be, its intent is clear, that in case of non-resident aliens the only measure of the tax is income derived within the United States.

With reference to aliens, therefore, it must be determined whether they are resident in which case they must pay the tax on their whole income; or if not resident whether they own property or carry on a business, trade or profession in the ■ United States.

In the latter case, they are taxable only with reference to income earned or paid in this country. If they are non-resident and do not derive an income from any source within our territory of course they are not taxable at all.

In the first place, then, who is a resident ?

§ 36. Meaning of phrase "residing in the United States." It has been said in England : "There is not much difficulty in defining the residence of an individual ; it is where he sleeps and lives. * * * 'Reside' does not mean an artificial residence. It means an actual residence. * * * Registration, like the birth of an individual, is a fact which must be taken into consideration in determining the question of residence. It may be a strong circumstance, but it is only a circumstance." * The question is often very difficult of solution. A learned Scotch judge said that "a man cannot have two domiciles at the same time, but he certainly can have two residences," ^ a rule that seems to be well recognized in Great Britain. According to Chief Baron Pollock, "The word 'reside' does not necessarily mean dwell." * According to Baron Mabtin,

§ 36. 1 Calcutta Jute MULs v. " Lord Inglis in Lloyd v. Inland Nicholson, L. R. 1 Exch. Div. 428, Revenue, 21 Scot. L. R. 484. 45 L. J. Exch. N. S. 821, 35 L. T. » Attorney-Oeneral v. McLean, 1 N. S. 275, 25 Week. Rep. 71, 1 Tax Hurlst. & C. 750, 761. ■Cas. 83 (1876).

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"There was strong ground for contending that one who spends the day at his shop attending to his business, and may there be seen and conversed with on matters of business, and does not choose to be eonununicated with elsewhere, is 'residing' there." * It has been held that the British Government may collect a tax on the income of a man domiciled and carrying on business abroad, when he owns an estate in England and lives there five months of the year.' And, e contra, it was held that under a statute exempting persons "actually in Great Britain for some temporary purpose only, and not with any view or intent of establishing his or her residence therein, and who shall not have actually resided in Great Britain for the period of six. successive calendar months," one who bought a house in London, furnished it, left a woman in charge of it during his absence,, and took his retinue to and from it, was taxable as a resident

of Great Britain and not within the exemption, although he occupied the house only ten weeks in the year and spent the rest of his time at his estate in Ireland, which is not a part of "Great Britain." ® So an American citizen who practised law in New York, but held a shooting in Scotland for a term of years and spent two months there annually, was held to reside in Great Britain for the purpose of the income tax.' An. American citizen was held to be a resident of the United Kingdom when, for twenty years, he had lived on board his own^ yacht, anchored near the shore, in tidal navigable waters, within a British port, obtaining provisions and necessaries from the nearest village, although the yacht had always been kept fully manned and ready to go to sea at any moment.* The mere fact of presence in, or absence from, the place claimed to be the residence would seem not to be a controlling element. Thus it was held that a sailing master who was absent from his

ilUd, p. 761. 42 Scot. L. E. 117, 7 F. 146, 5 Tax

6 Lloyd V. Inland Revenue, 25 Scot. Gas. 101, 1904.

L. E. 782. 8 Brown v. Burt, 105 L. T. N. S.

6 Attorney-General v. Coote, 4 420, 81 L. J. K. B. N. S. 17, 5 Tax
Price, 183. Gas. 667, 1911.

1 Inland Revenue v. Cadwalader,

;§ 37] iisrcoME from peopeety its u. s. 157

home for all but eighty-eight days in the year was yet a resident of the place where he hired a house and his family lived,^ .and similarly when he was absent the whole year.^" But a British merchant was held not to be assessable as a resident •of the United Kingdom, although his wife and children had lived there for a number of years, occupying latterly a house bought in the wife's name with the money of both husband -and wife, and the husband lived with them when in Great Britain, but he carried on business at Madras, India, usually resided there, and during the year of assessment was never in ihe United Kingdom.^^

§ 37. Meaning of phrase "income from property owned in the United States." Non-resident aliens must pay a tax upon the net income of all property owned in the United States.* When the property is tangible, the liability to the tax is easy -of ascertainment. When the property is a chose in action, the •question is more difficult of solution.^ Is interest due to a aion-resident alien upon the obligation of a resident of the United States, whether the debtor is a citizen, an alien or a domestic corporation, subject to the tax? And is there .any difference in this respect between debts evidenced by specialties, that is, bonds or other instruments under seal, and debts due upon promissory notes or other written, but un-

and in which I pointed out that resident aliens was 'property in the his 'Regulation' on that page, ex- United States,' and was taxable as. pressly announced that 'non-resident such under the United States in- foreigners owning interest bearing come tax statute of that time. I bonds are not subject to taxation also pointed out to Mr. Osborn that, on income from such bonds,' provid- the income tax statute of October ed they will sign and furnish certifi- 13, 1913, also prescribes its taxa- cates for themselves to the effect tion upon 'property owned in the that they art; non-resident foreign- United States' by persons residing ers. I also pointed out to Mr. Os- elsewhere, and that the intention of born in that letter, that that pro- Congress to include the bonds ot posed exemption of non-resident ali- corporations doing business in the ens from United States income taxes United States in the category of on the interest drawn by them from 'property owned in the United corporations organized and doing States,' is indicated by the fact business in the United States, was that in several places in the income a discrimination in favor of those tax statute the phrase 'capital in- non-resident aliens, as against all vested within the United States' is- American citizens; and I also stated used as an equivalent for the phrase- to the Commissioner in the same let- 'property owned in the United ter that no such discrimination was States.'

expressed in the income tax statute, "Having thus, in two successive- and that it was plain enough, in the letters, fully presented this vastly absence of any statutory authority important matter to Mr. Osborn, I therefor, that no administrative of- summed up my statements in the- ficer was justified in making any following paragraph: such discrimination. " 'For these reasons, it is perfect-

"On November 20, 1913, not hav- ly plain and it is undeniable, that ing received any reply to my letter your proposal to exempt non-resi- of November 15 to Mr. Osborn, I dent foreigners, owning interest- wrote to him again upon the same bearing bonds, issued by corpora- subject, and called his attention to tions in the United States, from that decision in the Erie case which that income tax, which everybody was written more than thirty years else owning such bonds must pay,, ago by Mr. Justice Bradley in the is a proposition which is contrary

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nonresident aliens and that it makes no difference in this re- spect whether such bonds or stock certificates are physicially located within or without the United States.' The regula- tions provide:

"Art. 8. The income of nonresident aliens subject to the normal tax of 1 per cent, shall consist of the total gains, prof- its, and income derived from all property owned, and from every business, trade, or profession carried on within the United States (to be designated as gross income), less deduc- tions (1 to 8, inclusive) specifically enumerated in Paragraph

B of the Act (see Art. 6), in so far as said deductions relate to said gains, profits, etc. The specific exemption in Paragraph C of the Act cannot be allowed as a deduction in computing the normal tax of nonresident aliens. Nonresident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States. The responsible heads, agents, or representatives of said nonresident aliens who are in charge of the property owned or business carried on shall make full and complete return of said income and shall pay the tax as provided herein." "The person, firm, company, copartnership, corporation, joint-stock company or association and insurance company in the United States - citizen or resident alien - in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains,

to the plain meaning of the statute writer operator, who really wrote-itself, and is also contrary to the the letter. But whoever may have decision of Justice Bradley, which I been the author of the communication bringing to your knowledge in tion, he did his work so carelessly this letter.' that he dated the letter 'November

"I never received any reply to 6, 1913,' instead of December 6, either of my letters to Mr. Osborn 1913. Moreover, that letter, in relation this subject until twenty-one response to my elaborate communication days after the 'first of them was tion of November 15 and November written which was sixteen days 20, was merely perfunctory, as will after the second one was written, appear from reading its forty-five

That reply reached me on December words, as follows:
7, 1913, and though it was signed "'This office is in receipt of your 'W. H. Osborn, Commissioner,' it letter of the 20th ultimo, in which evidently was not composed by him, you express yourself forcibly as to-for it had written upon it the ini- the matter of exempting interest tials of deputy commissioner Lu- income from American corporations ther F. Speer and also the initials to nonresident aliens from the pay-of three clerks, and it had in type- ment of the income tax. Your sug-writing, the initials of another in- gestion will be given consideration.' "dividual, who was probably the type- 6 X. D. 2017, Aug. 25, 1914.

profits and income, of whatever kind, to a nonresident alien, under any contract or otherwise, and which payment shall represent income of a nonresident alien from the exercise of any trade or profession within the United States, shall make return for such nonresident alien on form 1040 and shall pay any and all tax - normal and additional tax - chargeable upon the said income of such nonresident alien." *

§ 38. Meaning of the phrase "income from every business, trade or profession carried on in the United States by persons residing elsewhere." It was said by a British judge: "I agree with the opinion expressed by the late Lord Chief Justice Cockburn in *Sully v. Atterbury*, 5 H. L. 711, that it is probably a question of fact where the trade is carried on. * * * If it is a question of fact in each case, it will be impossible to make an exhaustive definition of what constitutes carrying on a trade." ^ There are some reported decisions in Great Britain which in default of decisions in this country under the old law may be of service. In the case of mercantile trades the distinction is taken between buying and selling. To buy in a country is not necessarily to do business there. Thus a member of a New York firm, residing in England, was held not taxable with respect to the firm profits made by the firm in the exportation of goods from England, on the ground that the firm was only a customer in England and did not carry on a trade there.^ On the other hand it is well settled in England that to keep an agent for the sale of goods in a foreign country is to transact business in that country.^ This has been held to be the case, although the agent takes the lease in his own name, transacts no other business, pays the rent and clerk hire and sells the goods in the foreign country upon a *del credere* commission guaranteeing the collections.*

6 T. D. 2013, Aug. 12, 19 U. S. App. 52 L. T. N. S. 814, and

§ 38. Lord Esher, M. R., in *Werle v. Colquhoun*, L. R. 20 Q. B.

Werle v. Colquhoun, L. R. 20 Q. B. Div. 753. For note on establishing

Div. 753. As to what constitutes agency to handle a corporation's

■ doing business within the state by products within the state as doing

a foreign corporation generally, see business therein, see 18 L.R.A.

note in 24 L.R.A. 295. " (N.S.) 142.

2 *Sully v. Atterbury*, 5 H. L. 711; *Tischler v. Atterbury*, Q. B. D. Hurlst. & N. 711 (1860) ; reversing 1885; 52 L. T. N. S. 814; *MacPherson v. Atterbury*, 5 H. L. 711; *Hewlett & Co. v. Moore* [1912] S. C. & N. 769 (1859). 3315, 49 Scot. L. R. 979, 6 Tax Cas.

3 *Pommery v. Atterbury*, 56 L. J. 107.

Q. B. N. S. 155; and see *Tischler v.*

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It is a significant circumstance to prove the carrying on of business that the taxpayer's name is in the city directory,* or on the door of an agent's premises,* or that he has an office for his private use with his agent.''

There is a statute of frequent occurrence in substantially the same phraseology in the various States of the Union requiring foreign corporations to file certificates as to certain facts of their incorporation, place of business, and the like, "before they shall be allowed to do business within the state." Under such a statute isolated single transactions do not constitute doing business in the state where the transaction occurred.' Neither is it transacting business in a State to lease telephones to a licensee who is to sublet them, even if the licensor have the privilege of collecting the rent from the sub-lessees if necessary.® But the maintenance of an agent within a State to solicit contracts, constitutes "doing business" there.*"

§ 39. Incidence of the tax with respect to corporations, joint-stock companies and associations. The tax is imposed upon the entire net income arising or accruing from all sources to every corporation, joint-stock company or association, and every insurance company, with certain exceptions, "organized in the United States, no matter how created or organized, joint including partnerships ; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year." * Whether the phrase "organized in the United States" includes corporations organized in the District of Columbia, Hawaii,

B. Werle v. Colquhoun, L. E. 20 Q. 9 V. 8. v. Am. Bell Telephone Co.

B. Div. 753. 29 Fed. 17 ; People v. American Bell

6 Werle v. Colquhoun, L. R. 20 Q. Telephone Co. 117 N. Y. 241, 22 N. B. Div. 753 ; Tischler v. Apthorpe, 52 E. 1057 ; Commonwealth v. American Bell, L. T. N. S. 814. Bell Telephone Co. 129 Pa. 217, 18

7 Tischler v. Apthorpe, 52 L. T. Atl. 122.

U. S. 814. 10 International Text Book Co. v.

»D. 8. Morgan & Co. v. White, Pigg, 217 U. S. 91, 104, 54 L. ed.

101 Ind. 413; Cooper Manufacturing 678, 684, 27 L.R.A. (N.S.) 493, 30

Co. V. Ferguson, 113 U. S. 727, 28 Sup. Ct. Rep. 481, 18 Ann. Cas. 1103

L. ed. 1137, 5 Sup. Ct. Rep. 739. (a correspondence school).
See Foster's Fed. Pr. 5th ed. §§ 88, § 39. 1 Act of Oct, 3, 1913, Sub-

164. For note on single or isolated section G (a), transaction by foreign corporation as doing business within the state, see 10 L.R.A.(N.S.) 693.

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Porto Eico, the Philippine Islands and Alaska, is not expressly stated.*

§ 40. Incidence of the tax upon foreign corporations, joint-stock companies and associations. A corporation, joint-stock company or association, organized, authorized or existing under the laws of a foreign country, is taxed only upon the amount of net income accruing from business transacted and capital invested within the United States.^ In determining the meaning of the phrase "business transacted," the cases where individual taxpayers were concerned are applicable.*

Where a foreign mining company, with its head office and mines in a foreign country, employed agents to sell its products in Great Britain, with authority in the agents to fix the prices at any sum above a minimum fixed by the company, the agents being paid by commission, and the appointment of sub-agents by them to be subject to the company's approval, deliveries to be made in a foreign country under contracts for payment "by cash in London," but all payments in fact being made by crossed checks, payable in some cases to the company and in others to the agents, and in every case forwarded with any requisite endorsements by the agents to the company at its home office, where they were deposited ; it was held that the company did not exercise a trade in the United Kingdom and that these profits were not subject to the income tax.' It has been held that entries of receipts in the course of bookkeeping, when cancelled by entries on opposite columns, are not sufficient to establish that the money was actually received at the place stated in the books ; * but that when a payment due from a branch in one country to another corporation under lease executed by it in another State from the former, and then charged off by an entry of the payment of a sum due by the latter to the former upon another account, thus saving the expenses of cross remittances, there is a constructive remittance, and, in Great Britain, it has been taxed as income received by the former from the latter.*

Where a foreign marine cable company had cables terminat-

2 But see *iiid.* Subsection G. Allen (1901) 3 F. 805; 38 Scotch L.

§ 40. 1 Subsection G (a). R. 628; 4 Tax Cas. 446.

2 *Supra*, § 22. 5 Scottish Mortgage Co. of New

3 *Crookston Brothers v. Furtado Mexico v. McKelvie* (1886) 14 Ee-

(1911) Scotch Cases 217 ; 43 Scotch ports 98; 24 Scotch L. K 87; 2 L. E. 134; 5 Tax Cas. 602. Tax Cas. 165.

* Standard Life Assurance Co. v.

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ing in Great Britain and offices there where it received messages for transmission to other countries, it was held that the receipts from messages received in that country were subject to the British income tax, although its main office was in a foreign country and it made no profits from telegraphing over the British land.® It has been held that a telephone company is not "doing business in" a State where telephones are used by another corporation under lease executed by it in another State upon a rental of a percentage of the royalties received by the lessees for the use of the telephones, although the lease authorizes the lessor, in case of default by the lessee, to collect these royalties in the name of the latter.'

The question as to what constitutes "doing business in the United States," has also been discussed with reference to non-resident aliens.*

§ 41. Exempt corporations. The statute exempts certain corporations from the income tax as follows :

"That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks, not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the

6 Erichsen v. Last, L. R. 8 Q. B. 414. amount retained at the end of the year over and above expenditures- phone Co. 117 N. Y. 241, 22 N. E. 1057; Commonwealth v. American Bell Telephone Co. 129 Pa. 217, 18 Atl. 122. See also S. American Bell Telephone Co. 29 Fed. 17, per Mr. Justice Jackson. It was held that an insurance company was not carrying on a trade in a colony where it invested in mortgages but did not insure. "Their trade is not in- vest but to insure." Scottish Prov. Institution v. Allen, 72 L. J. P. C. N". S. 70, [1903] A. C. 129. See Foster's Fed. Pr. 5th ed. §§ 88, 164. 8 Supra, § 36. this ruling also applies to mutual § 41. 1 "Co-operative dairies, no matter how organized, do not appear to fall within any of these exempted classes, and will, therefore, be required to make returns, follows:

In the preparation of their returns "Art. 92. Co-operative dairies not co-operative dairies may include in issuing stock and allowing patrons their deductions from gross income dividends based on butter fat in the amount actually paid to mem- milk furnished are not liable. la

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lodge system * or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members,* nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational * purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual ; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential

such case the 'dividends' are the purchase price of the raw material furnished."

2 "Art. 89. A society or association 'operating under the lodge system' is considered to be one organized under a charter, with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals, and supported by fees, dues, or assessments."

8 "Art. 90. Cemetery companies organized and operated exclusively for the mutual benefit of their members are exempt. The provisions of the law clearly indicate that companies which operate cemeteries for profit are liable to the tax. The status of cemetery associations under the law will, therefore, depend upon the character and purpose of the organization and what disposition is made of the income."

* Under a New York tax law it was held, that the New York Historical Society which was incorporated "for the purpose of discovering, procuring and preserving whatever may relate to the natural, civil, literary and ecclesiastical history of the United States in general and of

this State in particular," was not an educational corporation ; and that it might not prove by name that it was engaged in educational work not authorized in its charter or by-laws. Estate of De Peyster, 210 N. Y. 216, 104 N. E. 714. Under the same statute it was held, that the Arnot Art Gallery was not an educational corporation (Matter of Arnot, 71 Misc. 390, 130 N. Y. Supp. 197, aff'd. 145 App. Div. 708, 130 N. Y. Supp. 499), aff'd. 203 N. Y. 627, 97 N. E. 1102; but that the Metropolitan Museum of Art, which was incorporated "for the purpose of establishing and maintaining in said city of New York" a museum and library of art, of encouraging and developing the study of fine arts and the application of arts to manufacture and practical life, of advancing the general knowledge of kindred subjects and to that end of furnishing popular instruction and recreation, and which gave instruction upon those subjects, was an educational institution. (Matter of Mergentime, 129 App. Div. 367, 113 N. Y. Supp. 948. aff'd. 195 N. Y. 572, 88 N. E. 1125.)

governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico : Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory ; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract." °

The Treasury regulations provide;

"Art. 88. All corporations' and all beneficiary societies enumerated above shall by affidavit, or otherwise, at the request of the collector or Commissioner of Internal Revenue, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, or that none of the net income inures to the benefit of any private stockholder or individual. In the absence of such a showing, such organizations may, at any time, be required to make returns of annual net income or disclose their books of account to a revenue officer for examination in order that the status of the company may be determined."

"Art. 91. Any corporation, concerning whose status under the law there is any doubt, or which does not clearly come within one or another of the classes of those specifically enumerated

5 Act of October 3, 1913, II. Sub-section G (a) .

as' exempt, should file a return (in blank if desired) and attach thereto a statement setting out fully the nature and purpose of the organization, the source of its income, and what disposition is made of it, and particularly of any surplus."

The Treasury Department has ruled that the exemption relieves all such corporations, joint-stock companies and associations from any obligation to deduct the tax at the source of income belonging to persons not exempt.^

The statute was carefully drawn to avoid any possible interference with the revenues of States and their municipalities. In subsection B it allows a deduction from net income of individuals of all "State, County, School and Municipal taxes paid within the year, not including those assessed against local benefits." In Subsection G it provides that in the ascertainment of the net income of a corporation, joint-stock company, or association, or insurance company, whether domestic or foreign there shall be deducted all sums paid by it within the year for taxes imposed under the state or authority of any State of the United States. And in subsection B it further provides that in computing net income there shall be included the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the government of the United States. These provisions illustrate the anxiety of the framers of the act to avoid constitutional questions. Even if omitted, however, the last exemptions at least might perhaps have been obtained upon constitutional grounds.'" Within the principle of the decisions last cited below it is doubtful, whether the Federal Government can even indirectly reduce the income of the State or municipal corporation; as, for example, by a tax on the capital or income of a corporation in which such a State or corporation holds shares.*

6 T. D. 1967. Governor Hughes quoted supra,

1 Collector v. Day, 11 Wall. 1]3, § 29.
20 L. ed. 122, ; ■ Freedman v. Sigel, 8 But see Manhattan Co. v. Blake, 5 Chicago Leg. News, 196, Fed. Cas. 148 U. S. 412, 37 L. ed. 504, 13 No. 5,080; U. S. v. Ritchie, 4 Chi- Sup. Ct. Rep. 640, where it was cago Leg. News, 139, Fed. Cas. No. held that a tax on the average 16,1 68 ; JJ. 8. V. Railroad Co. 1 7 amounts of deposits In a bank is Wall. 322, 21 L. ed. 597; and see collectible. Although part of the de- also various opinions of Attorneys- posits were State funds the tax was General, 12 Ops. Atty.-Gen. 277; on the bank and not on the State, Ibid. 376; IMd. 439; 13 Ops. Atty.- and did not diminish the State rev- Gen. 67. But see the message of enues. See supra, § 27.

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Under the Corporation Tax Law of 1909, the Attorney General expressed the opinion that corporations organized in the Philippine Islands were not organized under the laws of the United States or of any State or Territory of the United States, or under the laws of any foreign country.^ The present law expressly exempts the Government of the Philippine Islands or Porto Eico, and any political subdivision of the Philippine Islands or Porto Pico, as well as any political subdivision of a State, Territory or the District of Columbia, in any in-

come accruing to the Governor of the Philippine Islands or Porto Rico.^" The term "political subdivision" also includes counties, towns and tovTuships, parishes when made a political unit, hundreds, wards, precincts, school districts, levee districts and special assessment districts, created under the laws of the several States for public purposes, such as the improvement of streets and public highways, the provision for sewerage, gas and light, and the reclamation, drainage or irrigation of bodies of land within the same when the districts are created for the public use.^*

There is in England a numerous class of quasi-Tpublic corporations of which in this country we have only a few examples, such, for instance, as the corporations known as the Trustees of the New York and Brooklyn Bridge. These corporations are institutions for the management of public works, such as docks on the seaboard, in which the community as such has a more or less definite interest. The English theory of such bodies seems to be that, although they may have revenues, they are not taxable with respect thereto unless the revenues are derived otherwise than from tolls levied for the use of their property by the members of the community they were created to serve. Revenues derived by way of tolls upon citizens are not regarded as profits.^ It is immaterial, however, if profits are earned by such a corporation, that they are devoted to the payment of its funded debt in order that the tolls upon citizens are to be reduced. A profit is a profit irrespective of the mode of its application.^'

9 29 Op. A. G. 164. Attorney-General v. Black, L. R. 6

10 II Subsection G (a). Exch. 308.

11 Opinion of Attorney General 1^ Mersey Docks, etc., Board v.

McReynolds January 30, 1914, cited Lucas, L. E. 8 App. Cas. 891 ; Loic-

T. D. 1946. rey v. Harbour Commissioners, 3

18 Glasgow, etc.. Commissioners v. Times L. R. 516.

Inland Revenue, 2 Gt. Sess. Gas. 708;

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It has been said by the Supreme Court of the United States speaking through Mr. Justice Day :

"It is no part of the essential governmental functions of a State to provide means of transportation, supply artificial light, water and the like. These objects are often accomplished through the medium of private corporations and though the public may derive a beneiit from such operations, the companies carrying on such enterprises are, nevertheless, private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special

franchises have been conferred." ^*

The act of 1913, however, expressly exempts any income derived from any public utility as well as from the exercise of any essential governmental function accruing to any State, Territory, including the Philippines and Porto Rico or the District of Columbia, or to any municipality or other subdivision of the same.'^ The prior exemption of income from a contract between such a public corporation and any person or corporation for the construction and operation of a public utility, was inserted for the benefit of the City of New York which had made such a contract for the construction of subways.''^

The provision for the exemption of corporations organized for charitable, religious or educational purposes and of mutual benefit societies, labor organizations, cemetery companies and building and loan associations were not contained in the statutes prior to 1894, and there are no decisions in the courts of the United States directly bearing upon the subject except as regards the constitutionality of such exemptions. In the case which decided that the Act of 1894 was unconstitutional, Mr. Justice Field expressed the opinion that the exemption of mutual savings banks and loan associations, was unjustifiable and invalid.^'' It has been subsequently held, however, that similar exemptions from the Corporation Income Tax of 1909 are valid.1'

14 Flint V. Stone Tr(u:y Co. 220 U. IT Pollock v. Farmers' Loan & S. 108, 172, 55 L. ed. 389, 421, 31 Trust Co. 157 U. S. 429, 598, 599, Sup. Ct. Rep. 342, Ann. Cas. 1912B, 39 L. ed. 759, 825, 826, 15 Sup. Ct. 312. Rep. 673.

15 Subsection G (a.). ii Flint v. Stone Tracy Co. 220 U.

16 Sen. Doc. 1st Sess. 63, Cong. S. 108, 172, 55 L. ed. 389, 421, 31 Briefs and Statements filed with Sup. Ct. Rep. 342, Ann. Cas. 1912B, Committee of Finance, 2053. 312. Printed in full infra, Part VII.

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Questions have been discussed in England which may be of value in ascertaining the construction of the Act of 1913.

The law of that country exempted the incomes of corporations established for "charitable purposes," and very learned arguments are to be found in the English reports with reference to the meaning of those words. The question was, whether "charitable purposes" was to be used in its popular signification of aid to the poor, or whether it was to receive the broader construction given to them in the common law, that is, whether "charitable purposes" was to be considered as meaning "charitable uses" as that phrase is used in the statute 43 Eliz., Ch. 4, and in the common law. The latter construction was finally adopted in the case which held that the income of a trust for the support of the children of Moravian ministers, certain single

persons of the Moravian faith and Moravian missionary establishments was exempt as devoted to charitable purposes.'^

The distinction may be a matter of moment under our own act. The statute 43 Eliz., Ch. 4, commonly known as the statute of charitable uses, reads (so much of it as is material) as follows:

"An act to redress the mis-employment of lands, goods, and stocks of money heretofore given to certain charitable uses.

"I. Whereas lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money have been heretofore given, limited, appointed, and assigned as well by the Queen's most excellent majesty, and her most noble progenitors, as by sundry other well-disposed persons ; some for relief of aged, impotent and poor people, some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways, some for education and preferment of orphans, some for or towards relief, stock, or maintenance for houses of correction, some for marriages of poor maids, some for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed, and others for relief or redemption of prisoners or

'^ Commissioners v. Pemsel [1891] Pem^el v. Commissioners, L. K. 22 A. C. 531, affirming Queen ex rel. Q. B. Div. 296 (1888).

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-captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers, and other taxes ; which lands, tenements, rents, annuities, profits, hereditaments, -goods, chattels, moneys, and stocks of money, nevertheless have not been employed according to the charitable intent of the -givers and founders thereof, by reason of frauds, breaches of trust, and negligence in those that should pay, deliver, and ■employ the same : for redress and remedy whereof, be it enacted by authority of this present parliament, That it shall and may be lawful to and for the lord chancellor or keeper of the great seal of England for the time being, and for the chancellor of the duchy of Lancaster for the time being for lands within the ■county palatine of Lancaster, from time to time to award commissions under the great seal of England, or the seal of the county palatine, as the case shall require, into all or any part or parts of this realm respectively, according to their several jurisdictions as aforesaid, to the bishop of every several diocese and his chancellor (in case there shall be any bishop of that diocese, at the time of awarding of the same commissions), and to other persons of good and sound behavior, authorizing them thereby, or any four or more of them, to enquire, as well by the ■oaths of twelve lawful men or more of the county, as by all other good and lawful ways and means, of all and singular such gifts, limitations, assignments, and appointments aforesaid, and

of the abuses, breaches of trusts, negligences, misemployments, not employing, concealing, defrauding, misconverting, or misgovernment of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, or stocks of money, heretofore given, limited, appointed or assigned or which hereafter shall be given, limited, appointed, or assigned, to or for any of the charitable and godly uses before rehearsed: and after the said commissioners, or any four or more of them (upon calling the parties interested in any such lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, and stocks of money), shall make inquiry by the oaths of twelve men or more of the said county (whereunto the said parties interested shall and may have, and take their lawful challenge and challenges), and upon such enquiry, hearing, and examining thereof, set down such orders, judgments, and decrees, as the said lands, tenements, rents, annuities, profits, goods, chattels, money, and

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stocks of money, may be duly and faithfully employed, to and for such of the charitable uses and intents before rehearsed respectively, for which they were given, limited, assigned, or appointed by the donors and founders thereof: which orders, judgments, and decrees, not being contrary or repugnant to the orders, statutes, or decrees of the donors or founders, shall by the authority of this present parliament stand firm and good, according to the tenor and purport thereof, and shall be executed accordingly, until the same shall be undone or altered by the lord chancellor of England or lord keeper of the great seal of England or the chancellor of the county palatine of Lancaster, respectively, within their several jurisdictions upon complaint by any party grieved to be made to them.

"II. Provided always, That neither this act, nor anything therein contained, shall in any wise extend to any lands, tenements, rents, annuities, profits, goods, chattels, money, or stocks of money, given, limited, appointed, or assigned, or which shall be given, limited, appointed, or assigned to any college, hall, or house of learning within the universities of Oxford or Cambridge or to the colleges of Westminster, Eaton or Winchester, or any of them, or to any cathedral or collegiate church within this realm.

"III. And provided also, That neither this act, nor anything therein, shall extend to any city, to town corporate or to any the lands or tenements given to the uses aforesaid within any such city or town corporate, where there is a special governor or governors appointed to govern or direct such lands, tenements, or things disposed to any the uses aforesaid, neither to any college, hospital, or free school, which have special visitors or governors, or overseers appointed them by their founders."

It will be observed that the kinds of trusts listed in the preamble to the foregoing act are in many cases neither religious nor educational. In the case of Commissioners v. Pemsel,^"

the trust claiming the exemption was a trust for the benefit of Moravian missionaries, which under our own law would be clearly exempt under the word "religious." Many foundations might be thought of, however, whose work was neither to assist the poor, to educate, nor to instruct in religion, which would

20 1Ud.

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nevertheless be properly regarded as devoted to "charitable uses," and it may well be that they are exempt under subsection G.

It has been held in Scotland that the word charitable purposes applies to the relief of poverty and that a religious trust is therefore, not exempt as devoted to charitable purposes." ^ A burial board, organized under a general statute intended to protect the public health by securing proper burial in villages,, was held not a charitable corporation. The board charged fees- for all burials, and although they did not profit themselves,, nevertheless the village did, because the fees were applied in reduction of parish rates. The element of gain to the ratepay- ers was present.^ ^ Under our statute cemetery companies are only exempt when "organized and operated exclusively for the mutual benefit of their members." *'

In Great Britain the rule further seems to be that where a society or association organized for charitable purposes makes a profit by the transaction of business, those profits are income subject to the tax.^* This rule has been applied to profits from the publication of hymn books, bibles and religious literature,^* from a restaurant ^® and from a hospital ; ^" ^ even when the profits were used for charitable purposes.^' The application of the profits to charitable purposes does not exempt the same from the income tax when the corporation or association is otherwise taxable.^ ^ On the other hand, merely incidental benefits would seem not to deprive such trusts of their exemption. Thus the House of Lords held that a society of engineers, the income of which was in fact devoted to the promotion of science should

*1 Baird Trustees v. Inland Rev- 27 St. Andrews' Hospital (North- enue, 25 Scot. L. R. 533 (1888) ampton) v. Shear smith [1887] L. R. Sc. Ct. Sess. 19 Q. B. Div. 624, where the hospital

22 Paddington Burial Board v. was under state supervision and the Commissioners, L. R. 13 Q. B. D. 9. services of the physicians were

23 Act of Oct. 3, 1913, G (a). gratuitous, 57 L. T. N. S. 413, 35

24 Religious Tract and Book So- Week. Rep. 811, 2 Tax Cas. 219. ciety of Scotland v. Forhes (1896) ^ ^ Ibid.

33 Scot. L. R. 289, 3 Tax Cas. 415. i9 JUd. See Attorney-General v.

z^ Trustees of Psalms and Hymns Black (1871) L. R. 6 Exch. 308, 40
V. Whitwell (1890) 7 Times L. R. L. J. Exch. N. S. 194, 25 L. T. N. S.
164, 3 Tax Cas. 7. 207, 19 Week. Rep. 1114, 1 Tax Cas.

26 Grove v. Young Men's Christian 52.
Association (1903) 67 J. P. 279, 88
L. T. N. S. 696, 19 Times L. R. 491,
4 Tax Cas. 613.

§ 4:1] EXEMPT COEPOEATIONS. 1<3

not be taxed, under a statute exempting income "legally appro-
priated and applied * * * for the promotion of science,"
although it also appeared that the professional interest of its
members was incidentally advanced. Such a holding would
«xtend to the numerous scientific and professional societies of
•our own country." It was held in England that a public libra-
ry was not exempt as a literary or scientific institution ; '^ but
the income of a society of engineers was exempted as applied
for the promotion of science.'^ "Mutual telephone companies,
mutual insurance companies, and like organizations, although
local in character, and whose income consists largely from
assessments, dues and fees paid by members, do not come with-
in the class of corporations specifically enumerated as exempt.
Their status imder the law is not dependent upon whether they
are or are not organized for profit. In coming within the
statutory exemption, all organizations of this character will be
required to make returns of annual net income, and pay any
income tax thereby shown to be due. For this purpose the
surplus of receipts of the year over expenses will constitute
net income upon which the tax will be assessed." '^

As to clubs, it has been ruled that they are not subject to
the tax, when they have been "organized and operated exclu-
sively for pleasure, recreation and other nonprofitable pur-
poses" and they have no "net income inuring to the benefit of
any private stockholder, individual, or member."* But it has
been held in England that a golf club is taxable so far as con-
cerns the income received from visitors, not members, for the
use of its green. '^

30 Commissioners of Inland Rev- tion of such companies, see Citizen's
enue v. Forrest, L. R. 15 App. Cas. Telephone Co. v. Osbom, 229 U S
334 (1890). 322, 57 L. ed. 1211, 33 Sup. Ct. Rep.'

s^ Andrews v. Mayor, etc. of Bris- 833.
tol, 61 L. J. Q. B. N. S. 715 (1892). 34 Commissioner Osborn to Lee,

32 Commissioners of Inland Rev- Higginson & Co. Mar. 4, 1914. See
enue v. Forrest, L. R. 15 App. Cas. also Acting Commissioner Williams
334 (1890), H. L. affirming Matter to Crescent Athletic Club Jan'y. 17,

of Institution of Civil Engineers, L. 1914; Deputy Commissioner Speer R. 20 Q. B. Div. 621 (1888), which to N. Y. Athletic March 2, 1914. reversed s. c. L. R. 19 Q. B. Div. 610 35 Carlisle and Silloth Golf Club (1887). V. Smith, [1912] 2 K. B. 177, 81 L

33 Regulations, Art. 80. As to J. K. B. N. S. 581, 106 L. T. N. S. the validity of a statutory exemp- 573, 6 Tax Cas. 48.

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Under the Corporation Tax Act of 1909, it was held: that the qualifying clause "No part of the net income of which inures to the benefit of any private stockholder or individual" did not qualify the whole proviso, but only the immediately preceding clauses, namely, "Nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes ; " ' ^ and that building and loan associations were exempt as organized and operated exclusively for the mutual benefit. of their members, although they issued both prepaid and instalment stock ; the prepaid stock being granted a fixed dividend, payable only out of the earnings of the association." The Circuit Court of Appeals said: "We are

isBerold v. Park View Bldg. & in the Act of 1909; and we wish to' Loan Ass'n, C. C. A. 210 Fed. 577, avoid even 'the appearance of evad- 579, 580; affirming Park View Bldg. ing this consideration. But cer- d Loan Ass'n v. Jlerold, 203 Fed. S76. tainly both constructions are avail- McPherson, J. in C. C. A. 210 Fed. able, and one seems as likely to be 579, 580: "As pointed out in the correct as the other. We believe association's brief, section 2 of the view we have indicated should the Income Tax provisions of the be adopted." But see Pacific Build- Act of October 3, 1913, lends ing & Loan Ass'n v. Eartson, 201 force to the construction that con- Fed. 1011.

finer the italicized clause to the 37 Berold v. Park View Bldg & fourth group. Section 2 in clause S Loan Ass'n, C. C. A. 210 Fed. 577; of the Act of 1913 repeals section 38 affirming Park View Bldg. & Loan of the Act of 1909, the reason being Ass'n v. Eerold, 203 Fed. 876. In that an earlier clause (G) is in effect the Circuit Court of Appeals Judge- a substitute for section 38, and that McPherson said (210 Fed. 580) : Congress did not intend to impose "But there is another reason for be- two taxes of the same nature at relieving that the clause in italics- the same time, one by the Act of could not have been intended to ap- 1913, and the other by the Act of ply to the group of 'domestic build- 1909. Being a substitute, therefore, ing and loan associations organized clause G also contains an excepting and operated exclusively for the mu- proviso, and this is as follows: tual benefit of their members.' And [quoting the same] We think it is the reason is this: Such application clear that the repeated use here leads to a conclusion that may fair- made by Congress of the negative ly be described as absurd. Every clause - 'no part of the net income building association is organized and of which inures to the benefit of any operated for the mutual benefit of private stockholder or individual' - its members; this benefit is attained throws light upon the previous use by profits; and profit is gained by of the same clause in the Act of the use of its funds - whether de-

1909, and strengthens the construction we have adopted. We agree that the argument is somewhat weakened by the possibility of posing that Congress was trying to make more clear in the Act of 1913 what may have been thought

rived from instalments, premiums, interest, or fines — supplemented by forfeitures, and by such dealing in real estate as it may be permitted or obliged to undertake. In every year of its normal operations it expects to have a net income, and

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EXEMPT COOPERATIONS.

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persuaded that Congress intended the word 'mutual' to mean 'substantially equal,' and that a building association is organized and operated for the mutual benefit of its members when they share in the profits on substantially the same footing. Exact equality is probably not possible, where part of the stock is prepaid, and part is instalment; but an approximate equality, sufficiently close for all purposes, is certainly not beyond the reach of calculation. We have no doubt that such a calculation is always made before the terms are adopted upon which prepaid stock is allowed to share in profits." ^' According to the Treasury regulations, under the present statute :

of course this net income belongs, or inures, to its members. Now, while the members can hardly be described accurately as 'private' stockholders (the word seems to be contrasted with some other relation to a particular association), they are certainly 'individuals'; and therefore, if the right of a building association to be exempted by the proviso is to be tested by the fact that no private stockholder or individual receives any benefit from its net income, the inevitable result will follow that the proviso has no effect upon building and loan associations at all, and that no such association can be exempted. We have said that in our opinion this conclusion comes near to absurdity, and we think that result is too

plain to require further discussion." In the District Court Judge Orr said (203 Fed. 879): "The plaintiff is clearly a domestic building and loan association. If, therefore, it be 'organized and operated exclusively for the mutual benefit' of its members, it would seem to come within the proviso of the statute. It will be observed that under the law each member has the same right to dictate the policy of the association. It does not increase his influence to own many shares of stock, because his right to vote does not depend upon the number of shares that he may hold, but simply upon his membership. There is therefore in the association, under the law, no means by which a single

stockholder, or a group of stockholders, by the acquisition of the majority of the shares, could control the association as against a majority of the members of the association. There is therefore a mutuality of right with respect to the control of the corporation. Nor do we think that the mere provision in the fifty-third section of the act for agreements to pay 5 per cent, interest to shareholders who pay the full par or maturity value of their shares affects the mutuality. It is not contemplated by the act that the shareholders who pay in advance shall have any priority in distribution of assets. There is therefore mutuality between the shareholders with respect to the assets of the corporation. Each person intending to become a member of the association has the right to prepay the full par or maturity value and take a fixed sum as his share of the annual profits of the association. The mere fact that there may be an inequality in the returns to the prepaying shareholder and the other shareholder in favor of the one or the other does not seem to the court to destroy the mutuality among the shareholders required by the proviso of the Act of Congress. The

and others, the funds so accumulated, 1011, 1016. So when authorized to be loaned," and the by-laws authorized loan to nonmembers and borrow from the issue of preferred stock, or stock them, see Central B'dj. L. & Sav. Co. the interest upon which was guaranteed. v. Hotrland, 216 Fed. 526. anteed, and authorized the direct- § 42. 1Act of Oct. 3, 1913, Sub- ors upon finding that the income section D,

§ 42] WITH RESPECT TO TIME. 177

crued within each preceding calendar year ending December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year : Provided further. That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed." ^ "Provided further. That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: And provided further, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint-stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint-stock companies or asso-

a Subsection G (c). See Tr. Keg. 165-171, 173-176.
Foster Income Tax. - 12.

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ciations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act : Provided further. That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint-stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act." ' The reason of the exemption of income received during January and February, 1913, was because the Sixteenth Amendment authorizing the imposition of an income tax was not adopted before the latter -part of February of that year.* The validity of the tax upon income received before the passage of the act is previously discussed.^ When an individual dies within the year the tax must be paid on so much of his income as accrued within the year and before his death.* It has been held: That the same deductions are made from the income accruing before his death that would have been made if he had lived ; ' but that when corporations go into liquidation or consolidation during the year, they are liable for the income received during the months prior to such liquidation or consolidation as the case may be.'

3 Ibid. Subsection S. not taxable during the period during^

i Supra, § 18. which, pursuant to the terms of hia

6 § 29, supra. will, it is allowed to accumulate in

6 Mandell v. Pierce, 3 Cliff. 134, the hands of a trustee. Wilier v.

Fed. Cas. No. 9,008 (1868). Cf. In Hawaiian Trust Co., 28 Haw. 589,

re The Income Tax Acts, 23 Vict. S93.

L. E. 58. "> Hid.

It has been held in Hawaii that ' T. D. Synopsis 1742.

the income of a decedent's estate is

CHAPTEE IV.

INCOME SUBJECT TO TAX.

§ 43. Statutory definition of income of individuals subject to normal tax. Different rules regulate the ascertainment of the income subject to the tax when imposed upon indi-

viduals and when imposed upon corporations, joint-stock companies and associations. The income tax imposed upon individuals is of two kinds : the normal tax ; ^ and the additional tax, which, in England, is called the super-tax.

The Act provides as to individuals :

"That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include 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, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent : Provided, That the proceeds of life insurance policies paid upon the death of a person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."

"That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest

§ 43, 1Act of October 3, 1913, Subsection A, subd. 2.

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paid within the year by a taxable person on indebtedness ; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits ; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise ; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year ; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends

upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided ; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of \$3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person."

"The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable."

"That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the

§ 44] INCOME SUBJECT TO ADDITIONAL TAX. 181

present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government." *

"That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her ;. but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: Provided, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together." ^

§ 44. Income subject to additional tax. "In addition to the* income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$50,000, and 2 per centum per annum upon the amount by which the total net income exceeds \$50,000 and does not exceed \$75,000, 3 per centum per annum upon the amount by which the total net income exceeds

\$75,000 and does not exceed \$100,000, 4 per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$250,000, 5 per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$500,000, and 6 per centum per annum upon the amount by which the total net income exceeds; \$500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax^ so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the pur-

Slbid. »Ibid. Subsection C.

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pose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax ; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed." * This tax is not paid by a corporation, joint-stock company or association.

This subdivision is obscure in its failure to define the meaning of the phrase "net income," upon which the amount of the additional tax is based. The only point upon which it makes a distinct proviso is that the tax shall be based upon the "net income from all sources, corporate or otherwise" and the share to which the taxpayer would be entitled of the gains and profits, whether divided or distributed or not, of all corporations, joint-stock companies or associations, formed for the

§ 44. 1 Act of October 3, 1913, Subsection A, subd. 2.

§ 44] INCOME SUBJECT TO ADDITIONAL TAX 183

purpose of permitting the gains and profits to accumulate, instead of being divided or distributed. It is clear that the additional tax is imposed upon the income derived from the dividends of corporations which have already paid the normal tax upon their ovⁿ net income.[^]

As regards the subject of deductions and exemptions, this subdivision merely refers to the provisions of the act relating to individuals chargeable with the normal income tax, so far as they are applicable and not inconsistent with this subdivision. The following subdivision, B, begins with the definition of net income.

"That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include 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, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ovⁿership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent : Provided, That the proceeds of life insurance policies paid upon the death of a person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income."

This undoubtedly applies. Then follows the statement beginning, "that in computing net income for the purpose of the normal tax there shall be allowed as deductions," followed by the deductions which have been previously quoted.[^] Are these deductions to be considered as incorporated by reference into subdivision A, so as to apply to the additional tax ? It is the usual custom to allow them.* If not, such tax will be estimated upon the gross income with the following exceptions.

The concluding paragraph of subdivision B provides : "That

2 See § 52, infra. This additional S Supra, § 42.
tax is imposed upon nonresident as 4 See Tr. Reg. 8.
well as resident aliens. Tr. Eeg. 8,
T. D. 2013.

in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government." It seems clear that this exclusion should be made when the additional tax is assessed.

A question has been mooted concerning subdivision C, which provides "that there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a married man with a wife living with him," &c. It has been suggested that inasmuch as this paragraph is by its terms not confined to the normal income tax, persons subject to the additional income tax are entitled to two deductions of this \$3,000 ; once when the normal tax is assessed and again upon the assessment of the additional tax, so that in fact the additional tax is not imposed unless the total net income exceeds \$23,000, or in the case of marriage, when the parties live together, \$24,000.^o This point has not yet been decided; but if the rulings of the Department are in accordance with the opinion of the deputy, Mr. Luther F. Speer, as expressed in his pamphlet, there will be no such deduction in the assessment of the additional tax.[^] And that is the practice in the Second District of New York, and it is believed in all the revenue districts.

§ 45. Statutory definition of income of corporations, joint-stock companies and associations subject to tax. As to corporations, joint-stock companies and associations, the statute provides:

"Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of

5 The suggestion was made to the 8 Speer's Pamphlet, 23, 28, author by Mr. R. G. Babbage of the New York bar.

§ 45] INCOME OF COKPOEATIONS. 18[^]

its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise,

including a reasonable allowance for depreciation by use, wear and tear of property, if any ; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made ; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year : Provided, That in case of indebtedness

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wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business : Provided further, that in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits, or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States •or of any State or Territory thereof, or imposed by the gov-

•ernment of any foreign country : Provided, that in the case of a
■corporation, joint-stock company or association, or insurance
■company, organized, authorized, or existing under the laws of
any foreign country, such net income shall' be ascertained by
•deducting from the gross amount of its income accrued within
the year from business transacted and capital invested within
the United States, (first) all the ordinary and necessary ex-
penses actually paid within the year out of earnings in the
maintenance and operation of its business and property within
the United States, including rentals or other payments required
to be made as a condition to the continued use or possession of
property; (second) All losses actually sustained within the
year in business conducted by it within the United States and
not compensated by insurance or otherwise, including a rea-
sonable allowance for depreciation by use, wear and tear of
property, if any, and in the case of mines a reasonable allow-
ance for depletion of ores and all other natural deposits, not to
exceed 5 per centum of the gross value at the mine of the output
for the year for which the computation is made ; and in case of
insurance companies the net addition, if any, required by law
to be made within the year to reserve funds and the sums other
than dividends paid within the year on policy and annuity con-
tracts : Provided further, that mutual fire insurance companies
requiring their members to make premium deposits to provide

^ 45] IWCOME OF COEPOEATIONS. 187

for losses and expenses shall not return as income any portion
•of the premium deposits returned to their policyholders, but
shall return as taxable income all income received by them
from all other sources plus such portions of the premium de-
posits as are retained by the companies for purposes other than
iiie payment of losses and expenses and reinsurance reserves:
Provided further. That mutual marine insurance companies
^shall include in their return of gross income gross premiums col-
lected and received by them less amounts paid for reinsurance,
but shall be entitled to include in deductions from gross income
•amounts repaid to policyholders on account of premiums pre-
viously paid by them, and interest paid upon such amounts be-
tween the ascertainment thereof and the payment thereof and
life insurance companies shall not include as income in any year
such portion of any actual premium received from any indi-
vidual policyholder as shall have been paid back or credited to
■such individual policyholder, or treated as an abatement of
premium of such individual policyholder, within such year;
(third) the amount of interest accrued and paid within the
year on its indebtedness to an amount of such indebtedness not
«ceeding the proportion of one-half of the sum of its interest-
bearing indebtedness and its paid-up capital stock outstanding
at the close of the year, or if no capital stock, the capital em-
ployed in the business at the close of the year which the gross
amount of its income for the year from business transacted and
capital invested within the United States bears to the gross
amount of its income derived from all sources within and with-
out the United States: Provided, That in the case of bonds

or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds." ^

§ 45. 1Act of October 3, 3913, Subsection G (b).

188 IIs^COME SUBJECT TO TAX. [§ 46-

§ 46. Judicial definitions of income. It was said by Lord Chancellor Halsbtjby of England : "I think it cannot be doubted, upon the language and the whole purport and meaning of the income tax acts, that it never was intended to tax capital * * * as income at all events." ^ Lord Macnaghtbn : "In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on 'profits or gains' in the case of duties chargeable under Sched.. (A.), and the expression 'profits or gains' is constantly applied without distinction to the subject of charge under all the Schedules." *

There are a few dicta in the State courts to the contrary.

"Strictly speaking, 'income' means that which comes in or is received from any business or investment of capital without reference to the outgoing expenditures." ' Accordingly, in a Georgia case "annual income" was construed as meaning "gross income." * So, "property may have .an annual value 'without any income.' " ^ And the term "profits or income" has been construed as meaning "gross profits" or "gross income," and not "net profits" or "net income." ° By the rule of construction, noscitur a sociis, however, the words in this statute must be construed in connection with those to which it is joined, namely, gains and profits; and it is evidently the intention, as a general rule, to tax only the profits of the taxpayer, not his whole revenue.' Accordingly, money received as the result of the change of an investment, or as the proceeds of a sale without profit, is not income. Thus, when a vendor received the purchase-money in annual installments, it was held in England' that such installments were principal and not taxable as "annual payments" or income.* So, too, an increase of capital

§ 46. 1 Secretary of State, in 6 Judge Miller, in Troy Iron & Council of India v. ScoHe [1903] Nail Factory v. Corning, 45 Barb.

A. C. 299, 302; 72 L. J. K. B. N. S. 233, 247.

617, 89 L. T. N. S. 1, 51 Week. Kep. « People v. Supervisors, 18 Wend.

675, 4 Tax Cas. 618. 605.

2 London County Council v. Atty. 1 But see Senate Debate August Gen. [1901] A. C. 26, 70 L. J. K. B. 26, 1913 Cong. Record Vol. 50, p. N. S. 77, 83 L. T. N. S. 605, 49 4193.

Weelc. Rep. 686, 4 Tax Cas. 265. i Foley v. Fletcher, 3 H. & N.

3 Judge Bronson in People v. Su- 769.
pervisors, 4 Hill. 20, 23.

* Goldsmith v. Augusta, etc. R. R.
Co. 62 Ga. 468.

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when realized cannot justly be called profit or income. Ex-
amples are the increase in the value of real estate, or personal
property, such as stocks, unless expressly provided in the
statute. "Mere advance in value in no sense constitutes the
■gains, profits, or income specified by the statute. It consti-
tutes and can be treated merely as increase of capital." ^

§ 47. Interest. In estimating the taxable income, interest
■received by the taxpayer is included.^ There are allowed as
'deductions also "all interest paid within the year by a taxable
person on indebtedness." * It is unsettled whether interest paid
.as damages and not by express contract is subject to the tax.^
But it has been held in England, that the interest included in
the income includes interest for a less period of time than a
year, paid by a purchaser who defaulted on the date of pay-
ment.* Where the Indian Government bought a railway and
paid for the same, instead of a gross amount, a semi-annual sum
for a term of years, with interest on the balance remaining un-
paid ; it was held : that these semi-annual payments represented
partly an instalment of the purchase money and partly interest
•on the amount of the purchase money outstanding; that the
former was capital and not income, and that the latter alone was
subject to the tax.*

According to Deputy Commissioner Speer, interest accrued
and due to the taxpayer, if good and collectable at the end of the
year should be returned as income, whether actually collected or
not.® Mr. Walker disputes this position saying that the form-
■er has overlooked the difference between the word "accrued"
.and the statutory term "derived."' Any Department regula-
tions upon the subject will be discussed in the next chapter.

9 Mr. Justice Field, in Gray v. 5 Secretoury of State in Council of
Darlington, 15 Wall. 63, 21 L. ed. India v. Scohle [1903] A. C. 299, 72
45. L. J. K. B. N. S. 617, 89 L. T. N. S.

§ 47. Act of October 3, 1913, 1, 51 Week. Rep. 675, 4 Tax Cas.

Subsection B. 618; East India Railway v. Secre-

2 Ibid. tary of State for India [1905] 2 K.

3 See Gateshead Corporation v. B. 413, 74 L. J. K. B. N. S. 779, 93 Lumsden (1913) 77 J. P. 124. L. T. N. S. 220, 54 Week. Rep. 4.

4 Bebb V. Bunney, 3 Hen. & M. 6 Speer's Pamphlet.

213. ^ Walker's Pamphlet, d. 66.

190 INCOME SUBJECT TO TAX. [§ 48''

§ 48. Income accrued but not received. The statute tax-
es "the entire net income arising or accruing from all sources in
the preceding calendar year ;" ^ and in the case of corporations,
joint-stock companies or associations, and insurance companies,
there is a second direction, "the tax herein imposed shall be-
computed upon its entire net income accrued within each pre-
ceding calendar year." * The adjective accrued is omitted from
the definition of net income, which, when belonging to a tax-
able person, is defined as including "gains, profits and income-
derived," with an allowance, amongst other deductions, of "all
interest paid within the year" by a taxable person on indebted-
ness and on "taxes paid within the year." ^ In the case of a
corporation, joint-stock company or association, or insurance-
company, income "received." * The provision concerning re-
turns by individuals states that they shall set forth "the gross
amount of income from all separate sources and from the total
thereof," omitting the word now imder discussion. That
concerning returns by corporations, joint-stock companies and
associations, directs that it shall contain "the gross amount of
its income received during such year from all sources, and if
organized under the laws of a foreign country the gross amount
of its income received within the year from business transacted
and capital invested within the United States," deducting,
amongst other things, "the amount of interest accrued and
paid within the year with certain exceptions." * A dispute has-
arisen concerning the meaning of the word "accruing."

The word "accrue" as defined in the reports has at least
four meanings : To arise as a growth or result ; ^ to become
vested ; '' to become enforceable ; ' to become due and payable.*

§ 48. III. A, subd. 1; G (a). See Napa State Hospital v. Yuha Coun-
also G (c). ty, 138 Gal. 378, 71 Pac. 450, 451.

ilUd. G (c). i Amy v. Dubuque, 98 U. S. 470,

Sllid. B. 476, 25 L. ed. 228, 231; McChiigan v.

ilhid. G (b). llolft, 80 111. App. 256, 259; Eising
ilhid. G (c). V. Andrews, 66 Conn. 58, 50 Am. St.
^Anderson v. Richards' Ex'rs, 99 Rep. 75, 33 Atl. 585, 586; Fowlkes
Ky. 661, 37 S. W. 62; Strasser v. v. Nashville d D. R. Co. 9 Heisk.
Stoats, 59 Hun, 143, 13 N. Y. Supp. S29, 830; Barnes v. City of Brooklyn,
167, 168 ; Gudcjel v. Southerland. 1 17 22 App. Div. 520, 48 N. Y. Supp. 36,
Iowa. 309, 90 N. W. 623, 624; 37 : Kennedy v. Burrier, 36 Mo. -i2S,
Knowlton v. Massachusetts Ben. JAfc 130; Rice v. United States, 122 U. S.
Ass'n, 171 Mass. 193, 50 N. E. 520. 611, 30 L. cd. 793, 7 Sup. Ct. Rep.
7 Hartshorne v. Ross, 13 Ohio Det. 1377.
Reprint, 30, 14, 2 Disney (Ohio) 15; B Moyer v. Badger Lurnber Co. 10

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Mr. Cordell Hull, who originally drafted the bill, said in his address to the New York State Bar Association: "There are two methods of computing net income — what is known as the book or credit or accrued basis, and the cash basis. Differences of opinion among Members of the two Houses of Congress and expert accountants and others are responsible for the lack of harmony of terms prescribing in each instance the exact basis upon which accounting shall be made. I think the accrued or credit basis will apply to corporations and associations with most convenience, and the cash basis will be more desirable for individuals. The taxpayer is entitled to employ the same basis in accounting for his income and in making claim for deductions, otherwise an injustice would result. I have the impression that the Treasury Department will administer the law on the accrued or credit basis." ^*

Mr. Albert H. Walker expresses the opinion that no income is taxable which has not been received, saying: "Where the word 'accruing' is similarly used, the implication is that a net income 'accrues' from a gross income; though the gross income is everywhere said to be 'derived' or 'received' from the various sources of income which are specified in the statute. The statutory use of the word 'accruing' is accurately proper, for the net income to which it is applied does 'accrue' from the gross income, through a process of successive deductions, which is prescribed by the statute as the proper method of ascertaining the amount of the net income which accrues from the gross income." ' "The statute nowhere expresses or implies the idea that any gross income includes anything which has not been actually received." *^ Commissions upon renewal premiums for insurance are treated by the Department as income

when received and income for the period in which they are received."

Kan. App. 142, 62 Pac. 434, 435; 9a N. Y. State Bar Ass'n Report,

Gutcliff v. MoAnaily, 88 Ala. 507, 1914, p. 139.

7 So. 331, 332 ; Fay v. Holloran, 35 1" The unconstitutional character
Barb. 295, 297; Schifferstein v. Al- and the illegal administration of the
lison, 123 111. 6G2, 15 N. E. 275, 276; Income Tax Law, demonstrated by
Mundt v. Sheboygan & F. du L. R. Albert H. Walker, pp. 44, 45.

Co. 31 Wis. 451, 464; A.J. Jen v. Arm- " 76i«Z. p. 65. See, also, Ibid.

strong, 58 App. Div. 427, 68 N. Y. p. 67.

Supp. 1079, 1081. 18 T. D. 2011, July 28, 1914.

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In a letter to the collectors, Acting Commissioner Williams instructed them as follows: "Returnable and taxable income is that actually realized during the year, that is, that which is •evidenced by the receipt of cash or its equivalent. Until any appreciation taken up on the books has been so realized, it will not be required to be returned as income. Hence, in the preparation of returns and in the examination of books for the purpose of verifying the same, mere book entries of appreciation in the value of capital assets will be disregarded." ^^

Upon the other hand, the instructions of the Treasury Department, endorsed upon their forms, direct as follows: "A person receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and •collectible." '* "Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual." ^* "Interest received upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions should be included in gross income, as well as all other interest due and accrued during the period for which return is made." ^^ In returns by corporations : "Accrued interest is considered to be interest due and payable, ■except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed." " "The gross income of mercantile corporations should be ascertained in the following

manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the

13 Letter of Aug. 14, 1914. members thereof before their divi-

14 Form 1040, Instruction 14; sion, this instruction seems to be Form 1041, Instruction 12. well founded.

"Form 1040, Instruction 15; le Forms 1030, 1031, 1032, 1033,

T'orm 1041, Instruction 14. Since the 1034, 1035, Instruction 18.

met earnings of the partnerahio are ^T Ibid. Instruction 19. jointly iu the possession of all the

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sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item Wo. 3 of the return." ^' "Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year." '' "To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year." ^°

It has been said that when land or a security is bought before the rent or interest upon the same falls due, the vendee is not liable for the tax upon what accrued before he acquired the title ; *^ but when in such a case the tax is deducted at the source, a complication might arise. ^^

The Corporation Tax Law of August 5th, 1909, did not in this connection contain the adjective, "accruing," but directed simply that every person subject to the tax should pay a tax ^'upon the entire net income over and above \$5,000 received by it," &c. In the construction of this statute it was held that nothing was taxed as income, except what was actually received. Judge Cross said:. "It seems almost to border upon absurdity to speak of income as including that which has not been received, and which in the ordinary uncertainties of business may never be received." *' In a later case under that same statute,

18 Form 1035, Instruction 21. Hon to Am. Bar Ass'n, A. D. 1914,

19 Ibid. Instruction 22. p. 5.

^oiUd. Instruction 23. ^H Infra, § 97.

21 Report of Committee on Taxa- 28 Mutiuil Benefit Life Ins. Co. v. Foster Income Tax. - 13.

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it was held that an increase in the book value of the assets of a corporation, caused by a revaluation of its property, did not constitute any part of its "income received within the year." ^*

The earlier statutes contain no general provisions for the taxation of income that has accrued but some of them specifically provide for taxation of dividends at the source when they are declared due.^ Some also contain a provision: "In estimating the annual gains, profits or income of any person, the interest over and above the amount of interest paid upon all notes, bonds, and mortgages, or other forms of indebtedness, bearing interest, whether due and paid or not, if due and collectible, shall be included and assessed as part of the income of such person for each year." ^*

The Act of August 28th, 1894, contained no reference to accruals in the general provision for the tax, but expressly stated: In estimating the gains, profits and income, there should be included "interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness, bearing interest, whether paid or not, ' if good and collectible, less the interest which has become due from said person or which has been paid by him during the year."

These acts contained no provision concerning accrued income, except in the case of interest. Under them it was held that the amount of a promissory note, taken in one year and payable in another, was not taxable as income of the latter year, although it might, perhaps, have been so had it fallen due in the

Berold, 198 Fed. 199, 216, affirmed L. 256, 257, similar to the statute as Herold v. Mutual Benefit Life Ins. just cited.

Co. 120 C. C. A. 256, 201 Fed. 918; 26 Act of June 30, 1864, Sec. 117; certiorari denied in 231 U. S. 755, 13 Stat, at L. 223, 275 ; Act of March .-)8 L. ed. 468, 34 Sup. Ct Rep. 323. 3, 1865, See. 1, 13 Stat, at L. 469,

^i Baldwin Locomotive Works v. 479 (U. S. Comp. Stat. 1901, p.

McCoach (D. C. E. D. Pa.) 215 Fed. 3701) ; Act of March 2, 1867, Sec.

067. 13, 14 Stat, at L. 471, 477; Act of
25 Act of July 1, 1862, Sec. 82, 12 July 14, 1870, Sec. 7, 16 Stat, at L.
Stat, at L. 432 (U. S. Comp. Stat. 256, 257. See Barnes v. The Rail-
1901, p. 186) ; Act of June 30, 1864, road, 17 Wall. 294, 21 L. ed.544;
Sec. 120, 13 Stat, at L. 223, 275; Railroad Co. v. United States, 101
Act of July 13, 1866, Sec. 9, 14 Stat. U. S. 543, 25 L. ed. 1068; United
at L. 98, 135, which makes the simi- States v. Indianapolis & St. L. R. Co.
lar provision for the deduction at the 113 V. S. 711, 28 L. ed. 1140, 5 Sup.
source of the tax upon coupons; Act Ct. Eep. 724.
of July 14, 1870, Sec. 15, 16 Stat, at

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former year and been allowed to remain unpaid.^^' In another
case Judge Drummond said:

"It might be true in many cases where a man made a charge
on his books for debts due as the result of the year's business,
they would constitute assets, and come within the definition of
gains or profits. For example, instead of money, he might re-
ceive promissory notes, bills of exchange, bonds or mortgages,
or different kinds of securities, and these, if good, might prop-
erly become a part of his income. Even treasury notes and
national bank notes were not actually money, but only the rep-
resentatives of money, though treated as such by the commercial
world, and with them the government is carried on and alone
supported, except by what gold is received through the customs;. .
Many kinds of securities - as bonds of the United States, for-
instance - are considered as money or available assets, because
convertible at once into money, and therefore when any of these
are received as the result of a year's business, they are legit-
imately a part of a year's income. The rule would be the same-,,
of course, if instead of them, it were property real or personal..
In all these cases there are real gains or profits. But when a
man, at the end of the year, found upon his books amounts
charged without having actually received any portion of the same-
or had bills receivable unavailable, it seemed to be a misnomer
to call them gains or profits, which were not, and never might be^
realized." ^'

It has been held that the phrase "accruing interest" means
interest which is accumulating but not due,^^ and that it does
not mean interest overdue and unpaid.*"

A State court held that interest due but not paid, and in-
terest accrued but not due, although secured by mortgage, were
not "surplus profits" of the creditor.*^

S7 United States v. Schillinger, 14 28 United States v. Frost, 9 Int>
Elatchf. 71, Fed. Gas. No. 16,228 Rev. Eec. 41, Fed. Gas. No. 15,172,
(1876, C. G. S. D. N. Y.) Johnson, Drummond, J.

J. In an earlier case it was said 29 Qross v. Partenheimer, 159 Pa.
that the tax could not be evaded 556, 28 Atl. 370, 371.

by leaving a good debt uncollected. 3" Ibid.

United States v. Frost, 9 Int. Rev. 31 People v. San Francisco Sav.

Rec. 41, Fed. Gas. No. 15,172 (D. C. Union, 72 Gal. 199, 13 Pac. 498.
N. D. 111). Dkummond, J.

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The Wisconsin Tax Commissioners in their instructions in
sending the administration of the Income Tax Law of that
State'* direct:

"18. Merchants, manufacturers and business men generally
will report sales on account or for credit as gross income of the
year when the sales are made.

19. Bookkeeping: The purpose of the law is to ascertain
the taxable net income. Any method of bookkeeping which
fairly attains this result is acceptable."

1. Making returns: (a) Section 1087m- 10.3 requires
every corporation to make a return "whether taxable under this
act or not."

(b) The fact that a corporation did no business or received
no income during the year 1913 does not relieve it from making
a return.

(c) Every question should be answered. If there is no
amount or information to be given opposite a question write in
the word "none."

It has been held that an accruing right is "one that is in-
creasing or enlarging or augmenting." '^

In another case Judge Johnson said : "In the absence of any
special provision of law to the contrary, income must be taken
to mean money, not the expectation of receiving it, or the right
to receive it at a future time." '* Speaking of promissory
notes, "until they were paid they were not income but only the
ground of expecting income." ^^

§ 49. Rents. The act specifically provides that taxable in-

come shall include rents.^ Where land was leased for a terra of years, the lessee covenanting to erect a building thereupon, the title to which, subject to the use of the lessee during the term, immediately vested in the lessor; it was ruled that the cost of erecting the building was in the nature of rent and should

32 Wise. Laws 1911, chap. 658. Blatehf. 71, Fed. Cas. No. 16,228,

Printed in full in Part V. per Johnson, J.

S3 Richards v. BelUngham Bay 3* Ibid.

Land Co. 4 C. C. A. 290, 7 U. S. App. § 49. 1 Act of October 3, 1913,

494, 54 Fed. 209, 213. Subsections A. B.

34 United States v. Schillinger, 14

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be returned as such by the lessor.* Produce paid as rent must be included.^

§ 50. Sales of real estate. The act provides that "the net income of a taxable person shall include accounts, profits and income derived from * * * sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property." Sales may be of real or personal property. Personal property may consist of farm produce or other personal property. Sales of both real and personal property may be individual transactions or part of a business carried on by the taxpayer. Different rules regulate the liability to taxation of the profits derived in these different ways. The earlier statutes provided that the net profits of sales, realized by sales of real estate purchased within the year, should be chargeable as income.* By the Acts of 1870 and 1894, taxable income included "profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated." * The present statute is silent upon that point. The draughtsman of the bill said : "My judgment would be that as to an occasional purchase of real estate not by a dealer or one making the buying and selling a business, this bill would only apply to profits on sales where the land was purchased and sold during the same year." * According to the British rule, the profits made by a

2 6 Int. Rev. Eec. 130. ownership or use of or interest in

3 5 Int. Rev. Rec. 154. real or personal property.'

§ 50. 1Act of June 30, 1864, § "The act does not differentiate ac-

116; Act of March 3, 1865, § 1; Act cording as the property is or is not

of March 2, 1867, § 13. bought or sold in the course of a

2 Act of July 14, 1870, § 7; Act regular business having dealings for
of August 28, 1894, § 28. profit for its object. The income of a.

3 Mr. Cordell Hull in the House of person engaged in a. mercantile busi-
Eeprescntatives, April 26th, 1913: ness, or in the business of buying

"In the phrase commonly used in or selling real estate, or in the busi-

the creation of trusts - 'rents, issues ness of placing securities, depends
of

and profits' - the word 'profit' does course on such profits,

not include a profit realized by con- "A problem arises, however, where
version of any part of the principal property is bought for investment or
fund (39 Cyc. 444), unless the trust for use and enjoyment, and is subse-
fund is invested in trade. quently sold because no longer need-

"The act, however, speaks of 'gains, ed, or in order to obtain funds, or
profits and income' derived from because there is a chance of making

'sales or dealings in property, wheth- a profit. The Prussian Income Tax
€r real or personal, growing out of Law specifies as income only the

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[§ 50

sale of real estate, are considered to be a change in the invest-
ment of capital and are not assessable as income,* unless the
sale was part of a business or vocation in which the taxpayer
was engaged.' Thus the sale of land by a fur company* and
the sale of a plantation by a rubber company,** were held not to
be a part of their business and consequently the profits there-
from were not assessed as income. On the other hand, it was
held that the profit upon the sale of a mine, received in the
shares of the capital stock of the vendee, when made by a com-
pany formed to purchase and develop mining properties, was

profits realized from the sale of securities as a matter of speculation (Sec. 12), and apparently does not count as income profits derived from the sale of real estate (Sec. 13).

The terms of the present act, while somewhat obscure, are apparently wide enough to cover as income any profit made by a sale. However, under a previous income tax act the United States Supreme Court, relying upon the wording, 'there shall be levied * » * annually upon the income • • ♦> (gigg found in the present act), held, contrary to the views of the Treasury Department, that a profit of \$20,000 realized upon bonds held for four years, could not be treated as income of the last year (Oray v. Darlington, 15 Wall. 63, three judges dissenting), and the act contains no provision to reach the income of former years legally taxable during those years.

"A letter of L. F. Speer, Deputy Commissioner of Internal Revenue, to a firm of lawyers in New York of January 20, 1914 (printed in the Chronicle of January 24, 1914), says:

" 'With respect to property sold, it is held that if the property has been owned for a number of years and the presumption may be fairly made that the increase in value has been constant during those years, then the profit received from the sale of the property should be prorated and such portion as shall belong to the period •of time in which the income tax was

in operation should be reported as income for the year during which the sale was made. The same would be true of losses.'

"In view of the questions raised under the former law it would have been appropriate to formulate some definite rule in the new law, or to make it clear that such profits are

not intended to be taxed as income. The letter cited suggests a compromise and not a solution, and it is not the function of the Treasury Department to supplement the defects of the act. This is one of the points that should be dealt with in a revision of the act." Report of Committee on Taxation to Am. Bar. Ass'n, A. D. 1914, p. 6.

* *Stevens v. Hudson's Bay Co.* (1909) 101 L. T. N. S. 96, 25 Times L. R. 709, 5 Tax. Cas. 424; *Tehran Jehore Ruiher Syndicate, Limited v. Farmer* [1910] S. C. 906, 47 Scot. L. R. 816, 5 Tax. Cas. 658. See *Assets Co. v. Forbes* (1897) 24 R. 578, 34 Scot. L. R. 486, 3 Tax. Cas. 542.

6 *California Copper Syndicate v. Harrison* (1904) 6 F. 894, 1 Scot. L. R. 691, 5 Tex. Cas. 159. But see *Furtado v. Cardonald Feuing Co. Limited* [1907] S. C. 66, 34 Scot. L. R. 66.

6 *Stevens v. Hudson's Bay Co.* (1909) 101 L. T. N. S. 96, 25 Times L. R. 709, 5 Tax. Cas. 424.

6« *Tebrau Jehore Rubber Syndicate, Limited v. Farmer* [1910] S. C. 906, 47 Scot. L. R. 816, 5 Tax. Cas. 658.

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taxable as income.' The proceeds of the sale of ore are income of the operator of the mine.'

Under the Treasury Regulations the profits "upon the sale of capital assets" of corporations, joint-stock companies and associations, and insurance companies, after deducting the proportionate amount for the years previous to January 1st, 1909, if the capital was owned before that date, are considered to be taxable income.' It has been suggested by Mr. Black that the Act might be construed by reading the word "or" into the clause before the words "personal" and "growing," and that then by a slight transposition of some of the other terms it would lay a tax upon the "unearned increment of land," namely, an increase in its market value accruing within the year from any other cause than its improvement by the owner. ^^ This suggestion does not commend itself to the present writer. ^'

Under the Treasury Regulations, when there has been a change in the book value of the capital assets of a corporation resulting from a reappraisal of the property, the consequent gains are considered as income, after deducting the pro rata gain for the years that any part of such property has been owned

7 California Copper Syndicate v. February 5, and reprinted in the Harrison (1904) 6 F. 894, 41 Scot. Chronicle of February 7, p. 426, that L. E. 691, 5 Tax. Cas. 159. increase in the value of securities

8 Stratton's Independence v. How- will be regarded as an increase in iert, 231 U. S. 399, 58 L. ed. 285, assets and should be accounted for 34 Sup. Ct. Rep. 136 (under Act of as income, provided always that the Aug. 5, 1909). taxpayer has kept his business ac-

9 Arts. 107, 108, 109. counts in the manner mentioned, i. e.,

10 Black, § 45. has made a record of the fact of

11 Cf. Tr. Reg. 146. But see § 41, increase in his ledger."

infra. Mr. Cordell Hull said in the There is not the slightest intima- House: "Unless the unearned inere- tion in the act itself that the mere ment is expressly made income, it is manner of bookkeeping can affect the not considered income in any sense character of appreciation as income, of the word, but simply increase of and a treasury ruling cannot control value or capital." (Cong. Rec. April the matter. If the act itself were 26, 1913.) explicit with regard to unrealized

"Where property appreciates In appreciation, the question would re- value while remaining in the hands main whether Congress has the con- of the owner, the notion that mere stitutional power to treat it as in- appreciation in value, not realized come. In Gray v. Darlington, 15 through sales, could be taxable as Wall. 63, 21 L. ed. 45, Justice Field income might be dismissed as fanci- said: "Mere advance in value in no- ful, if it were not for an alleged wise constitutes the gains, profits or ruling of the Treasury Department income specified by the statute." reported by the New York Times of

200 INCOME SUBJECT TO TAX. [§50'

by the taxpayer previous to January 1st, 1909.^ The in- structions endorsed upon the forms of returns by individuals provide : "Estimated advance in value of real estate is not re- quired to be reported as income, unless the increased value is taken up on the books of the individual as an increase of as- sets." ^'

§ 51. Sales of personal property in general. Profits de- rived from the sale of personal property are not ordinarily taxable as income unless the property was purchased and sold within the same year.^ Where, however, such sales are part of a business carried on by the taxpayer, the profits must be included in the taxable income, although the property was purchased in a former year.^ This was the ruling of a divided

court in which the doctrine was thus stated by Mr. Justice FIELD^ after quoting the language of the former statute :

" 'Gains, profits, and income for the year ending the 31st day of December next preceding the time for levying, collecting, and paying said tax.' This language has only one meaning, and that is that the assessment, collection, and payment prescribed are to be made up on the annual products or income of one's property or labor, or such gains or profits as may be realized from a business transaction begun and completed during the preceding year. There are exceptions, as already intimated, to the general rule of assessment thus prescribed. * * * Another exception is implied from the provision of the statute which requires all gains, profits, and income derived from any source whatever, in addition to the sources enumerated, to be included in the estimation of the assessor. The estimation must, therefore, necessarily embrace gains and profits from trade and commerce, and these, for their successful prosecution, often require property to be held over a year. In the estimation of gains of any one year, the trader and merchant will, in consequence, often be compelled to include the amount received up-

12 Arts. 109, 111. 16.341, and the rulings cited infra,

13 Form 1040. See infra, § 79. § 52.

§ 51. 1 Gray v. Darlington, 15 2 Gray v. Darlington, 15 Wall. 63, Wall. 63, 65-67, 21 L. ed. 45, 46. 65-67, 21 L. ed. 45, 46. But see But see United States v. Smith, 12 United States v. Smith, 12 Int. Rev. Int. Eev. Eec. 138, Fed. Cas. No. Ree. 138, Fed. Cas. No. 16,341, and

the rulings cited infra, § 55.

§ 52] SALES OF FARM PEODUCTS. 201

on goods sold over their cost, which were purchased in a previous year. Indeed, in the estimation of gains and profits of a trading or commercial business for any one year, the results of many transactions have generally to be taken into account which originated previously. Except, however, in these and similar cases, and in cases of sales of real property, the statute only applies to such gains, profits, and income as are strictly acquisitions made during the year preceding that in which the assessment is levied and collected. The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital. The rule adopted by the officers of the revenue in the present ease would justify them in treating as gains of one year the increase in the value of property extending through any number of years, through even the entire century. The actual advance in value of property over its cost may, in fact, reach its height years before its sale; the value of the property may, in

truth, be less at the time of the sale than at any previous period in ten years, yet, if the amount received exceed the actual cost of the property, the excess is to be treated, according to their views, as gains of the owner for the year in which the sale takes place. We are satisfied that no such result was intended by the statute." '

§ 52. Sales of farm products. The Act of 1894 provides that in estimating the gains, profits and income of the taxpayer, shall be included "the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, or corn, or other vegetable, or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family." ^ Former statutes had a similar pro-

SGray v. Darlington, 15 Wall. 63, § 52. lAot of August 28, 1894, 65-67, 21 L. ed. 45, 46. But see § 28, the rulings cited infra, § 55.

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vision "without an express exemption of the amount expended in the purchase or production of said stock or produce.^ Under these it was ruled: that the farmer in returning his income should enter all amounts received for the wool, hides and carcasses of animals that had died, provided the same were sold ; that he might then deduct the sums actually paid for purchase money for animals sold within the year or which had died within the year ; but that if the animals were raised on the farm, no deduction should be allowed.* That expenditures for labor in one year could not be deducted from the proceeds of the crop sold subsequently.* That the profit realized on a sale of standing or felled timber was taxable without reference to the time ■^^ when the land was purchased.' That the profits thereupon should be assessed by estimating the value of the land after the timber was removed, adding thereto the net amount received for the timber and from this sum, deducting the estimated value of the land the previous year.® That rent for land bought for produce is income and that the expenses of carrying on premises so leased should be deducted from the income of the lessee only and could not be deducted the second time by the lessor.'' The Act of 1913 has no provisions upon this subject; but the defendant has to a certain extent approved the practice under the former statutes, in the following instructions endorsed upon the original form for an individual's returns :

"11. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year. When animals were raised by the owner and are sold or slaughtered

he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting

2 Act of March 2, 1867, § 13 ; Act * 4 Int. Rev. Rec. 12.
of July 34, 1870, § 7. See, also, Act 6 1 Int. Rev. Rec. 171.
of June 30, 1864, § 117; Act of 6 2 Int. Rev. Rec. 61, amending 1

March 3, 1865, § 1. Int. Rev. Rec. 171.

8 3 Int. Rev. Rfic. 100. ' 5 Int. Rev. Rec. 154.

§ 53] DIVIDENDS. 203

expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old."

Under the Wisconsin statute the Commission of that state has directed as follows: "(a) The value of farm products consumed, by the family must be included as gross income, (b) Money spent for new fences, new buildings and other permanent improvements which increase the value of the farm cannot be deducted as expenses, (c) The cost of fattening cattle may not be specially deducted in computing the profit when such cattle are sold. Such costs are taken care of properly when the costs of feed and seed, hired labor, etc., are deducted, (d) Share rent may not be deducted. Full allowance is made for share rent when the costs of raising the produce (wages and other cash expenditures) are deducted, (e) Estimated losses - such as failure to realize expected profits through drought, low prices, etc. - cannot be deducted. Full allowance is made on this account when the costs of labor, etc., are deducted." ' Under the Virginia statute, income includes : "The amount of sales of wood, butter, cheese, hay, tobacco, grain and other vegetables and agricultural productions during the preceding year, whether the same was grown during the preceding year or not, less all sums paid for taxes and for labor, fences, fertilizers, clover or other seed purchased and used upon the land upon which the vegetable and agricultural productions were grown or produced, and the rent of said land paid by said person, if he be not the owner thereof." ^

§ 53. Dividends. The Act specifically directs that in determining the net income of a taxable individual shall be included gains, profits and income derived from dividends.^ The following clause, however, provides that in computing net income, for the purpose of the normal tax, there shall be allowed as deductions : "Seventh. The amount received as dividends

» Infra, § 60. § 53. 1 Act of Oct. 3, 1913, sub-

9Va. L. 1903, chap. 145, p. 155. section B.

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upon the stock or from the net earnings of any corporation[^] joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided." [^] It was said by Mr. Victor Moeawetz, that the holders of preferred stock of corporations thus escape the burden of the normal income tax, which falls solely upon the holders of common stock and the bondholders.[^] But the Treasury Department might contend that their dividends are taxed at their source as income derived from the obligation of a corporation.* The law provides : "Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury." [^] The person liable to the additional tax must consequently pay the same upon his share of the income of a corporation, although such corporation has already paid the normal tax upon the same at its source. This is an intentional discrimination against holding companies.[®] Dividends received from a foreign corporation, or from any other corporation which is not taxable upon its net income, are subject to the normal tax.'

A railroad or other corporation which has leased its properties in consideration of a rental equivalent to a certain rate of

2 lUd. Bar Association. N. Y. Bar Ass'n

3 New York Sun, May 8, 1913. Eeport, 1914, p. 139.

* Act of Oct. 3, 1913, subsection Professor Seligman says of this-

E. See § 70, infra. discrimination: "While this is not

5 Act of Oct. 3, 1913. Subsection the place to express any opinion as A, subd. 2. to desirability or the economic legiti-

6 "The corporation excise-tax law macy of holding companies in general, it is quite clear that, in the case same administrative machinery and of railroads at least, some form of substantially the taxing provisions holding company of non-competitive of the former are retained. Only a lines may be entirely compatible with few changes were made. One change the best public interests; and in any is designed in effect to impose a event the attempt to combine fiscal graduated tax upon corporations and prohibitive ends in the same holding stock in other corporations, measure is of doubtful wisdom." by reason of the superior business Seligman Income Tax, 2d ed. 685. advantages derived therefrom. This "> Bailey v. Railroad Co. 106 U. S. is not an unreasonable graduation." 109, 27 L. ed. 81, 1 Sup. Ct. Rep. Representative Cordell Hull, of Ten- 62; distinguishing s. c. 22 Wall. 604, nessee, before the New York State 22 L. ed. 840. See Merchants' In-

■dividends on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee •directly to the stock and bondholders, should, nevertheless, make & return of annual net income showing the rental so paid as having been received by the corporation.* Under the former statutes it was ruled, that stock dividends, which represented earnings of a corporation during previous years, were not taxable as dividends. Whether dividends payable to foreign stockholders are taxed is not specifically stated. If the legislative history of the bill is to be conclusive, it would seem to be the intention of Congress not to tax the same.^

Mutual life insurance, fire insurance and marine insurance companies, and also many insurance companies that are not mutual in their nature, are accustomed to return or credit to their policyholders every year sums which are termed in insurance nomenclature "dividends." So far as these consist of a return •to the policyholder of the loading or excessive premium charge, made to meet contingencies, in the case of life insurance companies and mutual fire and marine insurance companies, they are by the statute expressly deducted from the income of the corporation liable to taxation,^" and probably they are not taxable as part of the income of the stockholders, although they may properly be deducted from any credit he may claim for payments on account of insurance. Actual profits paid to participating policyholders might, however, be held to be taxable as part of their income, when no tax upon the source was paid.^^

§ 54. Income from professions and vocations. The statute further taxes income from professions, and vocations.^

Insurance Co. v. McCartney, 1 Low. when the profits were earned by the Dec. 447, Fed. Cas. No. 9,443. corporation; they became income to 8 Tr. Reg. 80. the stockholders when distributed as

9 Ruling 7 Int. Rev. Rec. 155. But dividends ; but not before. Van Dyke see Railroad Co. v. Collector, 100 U. v. City of Milwaukee, - Wis. - , S. 595, 25 L. ed. 647; United States 140 N. W. 812.

v. Erie Ry. Co. 106 U. S. 327, 27 L. 10 Act of Oct. 3, 1913, subsection ed.]5], 1 Sup. Ct. Rep. 223. Under G (6). See infra, § 70.

the Wisconsin Income Tax Law it n See Last v. London Assurance

has been held that dividends de- Corporation (1885) L. R. 10 App.

clared and distributed after the law Cas. 438, 55 L. J. Q. B. N. S. 92,

went into effect, out of surplus on 53 L. T. N. S. 634, 34 Weekly Rep.

hand prior to that date, are taxable 233, 2 Tax. Cas. 100.

in the hands of the recipient, on § 54. 1 Subsection B.
the ground that it was immaterial

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It may be contended that an attorney is an officer of a State* and that his compensation is consequently exempt. In England, the profits of a professional bookmaker on the races were held taxable as income from a vocation.'

In Great Britain the rental value of an apartment, in a bank building given to the officer of a bank, was held not to be taxable as income.*

Profits credited to an employee upon the books of his employer are taxable as income if he has an absolute right to receive them in the future, even it has been held, when that depends upon the performance' by him of certain conditions ; * but not, when he has no right to receive them until the latter's capital has been repaid him.'" The customary Christmas presents to clerks are considered as income from their vocation and taxable as income.' Easter offerings® and other voluntary contributions" by parishioners to their clergymen, and payments by a Clergy Sustentation Fund ^^ and a Stipend Augmentation Fund ^^ created for the purpose of increasing the annual compensation of clergymen were held to be taxable as income; but not grants by a Curates' Augmentation Fund in recognition of faithful service for a period of time,*' nor

2 See Ex parte Garland, 4 Wall. Cas. 335, set out under § 163, post^ 333, 378, 18 L. ed. 366, 370; Re Wall, s Smyth v. Stretton (1904) W. N. 13 Fed. 814, 27 Alb. L. J. 91; Ex 90, 90 L. T. N. S. 756, 53 Week. Rep. parte Laio, 35 Ga. 285, Fed. Cas. No. 288, 5 Tax Cas. 36.

8,126, 6 Am. L. Rep. N. S., 410, ^ 1Ud.

note; Matter of Dorsey, 7 Port. T Walher v. Reith (1906) 8 F.

(Ala.) 293; Cohen M. Wright, 22 Ca.\. 381, 43 Scot. L. R. 245.

293 ; Heffren v. Jayne, 39 Ind. 463, 8 7 Int. Rev. Rec. 35.

13 Am. Rep. 281; Matter of Burch- s Blakiston v. Cooper [1909] A. C.

ard, 27 Hun, 429; Matter of Baum, 104, 78 L. J. K. B. N. S. 135, 10&

30 N. Y. S. R. 174, 8 N. Y. Supp. L. T. N. S. 51, Tax Cas. 347.

771; Baur v. Betz, 7 N. Y. Civ. Proc. ' ^o Inland Reverme v. Strarg

Rep. 233, 1 How. Pr. N. S. 344 (1878) 15 Scot. L. R. 704, 1 Tax
firm in 99 N. Y. 672) ; Ingersoll Cas. 207. But see Turner v. Guxon,
V. Howard, 1 Heisk. 247; Leigh's L. R. 22 Q. B. Div. 150.
Case, 1 Munf. 468. ^ Herbert y. MoQuade [1902] 2 K.
s Partridge v. Mallandadne, L. R. B. 631, 71 L. J. K. B. N. S. 884, 87
18 Q. B. Div. 276. L. T. N. S. 349, 4 Tax Cas. 489.
*Tennant v. Smith [1892] A. C. ^ Poynting v. Faulkner (1905) 93:
150, 61 J. L. P. C. N. S. 11, 66 L. T. L. T. N. S. 367, 21 T. L. R. 560,
N. S. 327, 3 Tax Cas. 158. Also 5 Tax Cas. 145.
see McDougal v. Sutherland (1894) ^ Turner v. Guosson (1888) L. R.
21 R. 753, 31 Scot. L. R. 630, 3 Tax 22 Q. B. Div. 151, 58 L. J. Q. B.
Cas. 261; and Corke v. Fry (1895) N. S. 131, 60 L. T. 17. S. 332, ST
22 R. 422, 32 Scot. L. R. 341, 3 Tax Week. Rep. 254, 2 Tax Cas. 422.

§ 54] PROFESSIONS AND VOCATIONS. 207

Sunday collections paid to the incumbent because he -was
poor."

According to the instructions of the Treasury Department
endorsed upon the forms of returns for individuals : "Persons
receiving fees or emoluments for professional or other services,
as in the case of physicians or lawyers, should include all actual
receipts for services rendered in the year for which return is
made, together with all unpaid accounts, charges for services,
or contingent income due for that year, if good and collecti-
ble." " This is in accordance with the opinion previously ex-
pressed by Mr. Speer : "Persons receiving fees or emoluments
for professional or other services, as in the case of physicians
or lawyers should include all actual receipts for services rend-
ered in the year for which return is made, together with all un-
paid accounts, charges for services, or contingent income due
for that year, if the same are considered good and collectible.
Should any such accounts prove to be bad or uncollectible, the
amount of same are deductible from income for the year in
which they are ascertained to be losses and are so treated and
acknowledged by the taxable person." ^

Mr. Walker disputes this position as follows: "The idea
that the statute obliges a lawyer or a doctor to somehow raise
money with which to pay, during the month of June of each
calendar year, an income tax upon the as yet unpaid fees which
he earned during the preceding calendar year, even though

he has not received and may never receive payment of those fees, is an extraordinary idea, which cannot be supported by reference to the statute. On the contrary, the statute provides, in the third paragraph that the items which are to be included in the gross income of a person, are such items of gains, profits, and income as that person 'derived' from any source whatever. In the English language, the verb 'derive' is a synonym of the verb 'receive ; ' and the adjective 'derivable' is a synonym of the adjective 'receivable.' If the statute had used, in its third paragraph, the adjective 'derivable,' or the adjective 'receivable' Mr. Speer's pamphlet would have been right on this

liTurton v. Cooper (1905) 92 L. 15 Form 1040, Instr. 13.
T. N. S. 863, 5 Tax Cas. 138. W Speer's Pamphlet.

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point." " Under the Wisconsin statute the Tax Commission has directed: "Doctors, lawyers and professional men will report their fees or earnings when collected."

§ 55. Incomes derived from wages or compensation. The Act specifically taxes incomes derived from salaries, wages, ■or compensation for personal service of whatever kind and in whatever form paid, or from professions and vocations, when in excess of \$3,000 a year.^ The salaries of the present President of the United States during the term for which he has been elected, of the Judges of the Supreme and inferior courts ■of the United States in office at the time of the passage of the Act, and the compensation of all officers and employees of a State or any political subdivision thereof, are exempted ; except, in the last case, when such compensation is paid by the United States Government.* "Where the salary of a Federal officer exceeds \$3,000 or \$4,000 annually, in case the taxpayer is or is not married and living with husband or wife, as the case may be, the paymaster or other disbursing officer takes the amount of tax from the amount of salary.' When the salary is paid by a private employer, he does the same.* It has been held that travel pay or mileage and commutation for the subsistence of naval or military officers of the United States, to the extent of the surplus, if any, over actual expenditures therewith connected, must be treated for the purposes of the tax as additions to their salaries. ° When a tax has been illegally deducted from the salary of a Federal officer, he can recover it from the United States by a suit in the Court of Claims.^

It has been held in Great Britain that sums annually placed to the credit of a school teacher, which were payable to him upon his retirement or resignation, under certain conditions, were in true effect additions to his salary upon which the tax

17 Walker's first pamphlet on the * IMd.

Income Tax Law, p. 65. See, also, B Attorney General Olney, 21 Op.

Walker's second pamphlet on the In- Atty. Gen. p. 112.

come Tax Law, p. 44; and § 48, 6jud. Code, 36 Stat, at L. 1087,
supra. chap. 231, § 145, U. S. Comp. Stat.

§ 55. 1 Act of October 3, 1913, Supp. 1911, p. 128 ; United States v.

Subsection B. See supra, % 28. McDermott, 140 U. S. 157, 35 L. ed.

2iMd. 394, 11 Sup. Ct. Rep. 746; Foster's

3 Ibid. Subsections C, E. Fed. Pr. 5th ed. § 671.

§ 56] SALARIES. 209

must be paid," but that sums credited to an employee's account, which could not be withdrawn until the whole amount of the master's capital had been repaid, were not ; ' that annual grants made to a clergyman out of a Clergy's Sustentation Fund or Stipend Augmentation Fund, destined to raise the income of benefices up to a specified yearly amount, for the purpose of increasing his compensation,^ and voluntary Easter offerings given by parishioners to the vicar in response to a request by the bishop asking churchmen to mitigate the hardships of the underpaid clergy generally, were profits and gains of the profession of the clergymen; ^^ but that parts of the Sunday collections paid to the incumbent, which would not have been made unless he had been poor,^^ and a grant to a curate in recognition of faithful service for more than fifteen years,** and an annuity payable to an infirm minister who had retired, were not.** The customary Christmas presents to clerks are considered as compensation for services rendered and taxable as income.**

§ 56. Salaries. Salaries when in excess of \$3,000 are expressly taxed as income,* unless the payee thereof is married and lives with wife or husband, as the case may be. In such case the salary in excess of \$4,000 only is taxed; but if husband and wife both live together, only one deduction on \$4,000 is made from the aggregate income.* This applies to officers and employees of the United States, as well as those employed by private individuals.^ The tax is paid by the employer,* unless the compensation is not fixed or certain, or is indefinite or

1 Smyth V. Stretton, W. N. 90, 90 " Turton v. Cooper, 92 L. T. N. S.

L. T. N. S. 756, 53 Week. Rep. 288, 863, 5 Tax Cas. 138.

5 Tax Cas 36 ^^ Turner v. Cuxson, L. E. 22 Q.

n Walker v.' Reith, 8 F. 381, 43 B. Div. 150, 58 L. J. Q. B. N. S.

Scot. L. R. 245 (1906). 151, 60 L. T. N. S. 332, 37 Week.

8 Herbert v. MoQuade [1902] 8 K. Rep. 254, 2 Tax Cag. 422.

B 631 71 L J K B N S 884, 1* Duncan's Trustees v. Farmer
87 L. T. N. S". 349, 4 Tax Cas. 489; [1909] S. C. 1212, 46 Scot. L. R. 857,
Poynting v. Faulkner (1905) 93 L. 5 Tax Cas. 417.
T. N. S. 367, 21 Times L. R. 560, "Ruling, 1 Int. Rev. Rec. 150;
5 Tax Cas. 145. Ruling, 7 Int. Rev. Rec. 35.
10 Blakiston v. Cooper [1909] A. § 56. 1 Act of October 3, 1913,
C. 104, 78 L. J. K. B. N. S. 135, 100 Subsections B, C.
L. T. N. S. 51, 5 Tax Cas. 347. See 2 Imd. Subsection C.
Inland Revenue v. Strang, 15 Scot. 3 Ibid. Subsection D.
L. R. 704, 1 Tax Cas. 207 (1878). * Ibid. Subsection E.
Foster Income Tax. - 14.

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irregular as to amount or time of accrual. In the latt/Cr case
it is paid by the individual.'

The statute exempts from the tax "the compensation of the
present President of the United States during the term for
which he has been elected, and of the judges of the supreme
and inferior courts of the United States now in office, and the
compensation of all officers and employees of a State or any
political subdivision thereof except when such compensation
is paid by the United States Government." * This exemption
so far as it applies to the present President and United States
judges would probably be made by the courts under the Con-
stitution, even if not contained in the statute.' Whether the
salaries of State officers and of political subdivisions of States,
such as municipalities, are taxable under the Sixteenth Amend-
ment, is an undecided question.' Whether the exemption ex-
tends to the judges of the courts of the Territories and District
of Columbia, such as the District Court of Alaska, the District
Court of the United States for Porto Rico, the District Court of
Hawaii, the Supreme Court of the Philippines, the United
States Court for China, the Supreme Court of the District of
Columbia and the Court of Appeals of the District of Columbia ;
may be doubted. These are not usually considered to be courts
of the United States.' The same doubt exists concerning the
salaries of members of the Board of General Appraisers and
the fees of United States Commissioners.

§ 57. Property acquired by gift, inheritance, or life
insurance. The tax is imposed upon "the income from but not
the value of property acquired by gift, bequest, devise, or de-
scent: Provided, That the proceeds of life insurance policies

6 /bid Subsection B, D. 1079, 26 Sup. Ct. Rep. 685; Romeu

6 Ibid. Subsection B. v. Todd, 206 U. S. 358, 368, 51 L. ed.

7 See § 28, supra. 1093, 1097, 27 Sup. Ct. Rep. 724;

8 See § 27 sv/pra. (United States Court for Porto

9 American Insurance Co. v. Can- Rico). But it has been held that.
ter 1 Pet. 516, 7 L. ed. 244; Benner the Supreme Court of the District
V. I'ortcr, 9 How. 235, 13 L. ed. 139; of Columbia is a court of the Unit-
Clinton v. Englebrecht, 13 Wall. 434, ed States within the meaning of
20 L. ed. 659; McAllister v. United U. S. Rev. Stat. § 714, U. S. Comp.
States, 141 U. S. 174, 35 L. ed. 693, Stat. 1901, p. 578. See Foster's Fed.
a 1 Sup. Ct. Rep. 949 ; James v. Unit- Pr. 5th ed. § 2.

ed States, 202 U. S. 401, 50 L. ed.

§ 57] GIFTS AND BEQUESTS. 211

paid upon the death of the person insured or payments made by
or credited to the insured, on life insurance, endowment, or an-
nuity contracts, upon the return thereof to the insured at the
maturity of the term mentioned in the contract, or upon sur-
render of contract, shall not be included as income." ^

"The act specifies 'the income from, but not the value of,
property acquired by gift, bequest, devise or descent.' Perhaps
such a provision was believed to be called for in view of the
income tax act of 1894, which taxed as income the principal of
property so acquired. A question must, however, arise under the
present wording with respect to gifts or bequests of annuities.
To the recipient they are 'property acquired by gift, bequest,
devise or descent' and hence according to the letter of the law
not taxable, yet there is room for the contention that annuities
are income, particularly in view of the requirement of the deduc-
tion at the source of the tax on 'annuities' in paragraph 2 of E." ^
Mr. Theodore M. Taft, of the New York bar, is said to have
expressed the opinion, in which Mr. Henry W. Jessup con-
curred: that an annuity and the income of a trust estate be-
queathed to the beneficiary for his life prior to the passage of
the Act is not subject to the tax; but it has been the usual cus-
tom of trustees to deduct the tax from such income at its source
whenever the same exceeds the statutory exemption.

The Treasury Regulations concerning corporations, joint-
stock companies, associations, including limited partnerships,
and insurance companies, provide:

"Art. 120. Amounts paid for pensions to retired em-
ployees or to their families, or others dependent upon them, or
on account of injuries received by employees, are proper de-
ductions as 'ordinary and necessary expenses ; ' gifts or gratui-
ties to employees in the service of a corporation are not prop-

erly deductible in ascertaining net income.

"Art. 121. Donations made for purposes connected with the operation of the property when limited to charitable institutions, hospitals, or educational institutions, conducted for the

§ 57. 1 Act of October 3, 1913, 2 Report of Committee on Taxation Subsection B. to Am. Bar Association, p. 8.

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benefit of its employees, or their dependents, shall be a proper deduction for ordinary and necessary expenses."

In Great Britain, payments to clergymen out of Sunday collections, made because they are poor,* and grants by a Curates' Augmentation Fund in recognition of faithful service, are considered to be gifts and not income ; * but voluntary contributions by parishioners,^ including voluntary but customary Easter offerings,® are taxed as income from a profession. The customary Christmas presents to clerks are considered as compensation for services rendered and taxable as income.'

§ 58. Miscellaneous income of individuals. The statute, after enumerating special kinds of taxable income, then taxes all gains, profits and income derived from any source whatever, including the income from, but not the value of, property acquired by gift, bequest, devise or descent: "Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income." *

According to the Treasury Regulations :

Ordinary copartnerships are not, as such, subject to the tax imposed by this act, but the individual members of any such partnership are liable for income tax only in their individual capacity on their respective shares of the earnings of such partnership, whether such earnings be distributed or not.' The instructions direct that pensions received from the United States shall be returned as income.* Besides the incomes specifically enumerated above, all other kinds of annual profits are taxable. The proceeds of the sale of ore are income of the

iTurton v. Cooper (1905) 92 L. 104, 78 L. J. ,Q. B. N. S. 135, 100

T. N. S. 863, 5 Tax Caa. 138. L. T. N. S. 51, 5 Tax Cas. 347.

i Turner v. CvAxson (1888) L. R. 7 Ruling, 1 Int. Eev. Rec. 150;

22 Q. B. Div. 150, 58 L. J. Q. B. Ruling, 7 Int. Rev. Rec. 35.

N. S. 131, 60 L. T. N. S. 332, 37 § 58. 1 Act of October 3, 1913,
Week Rep. 254, 2 Tax Cas. 422. subsection B.

6 Inland Revenue v. Strang (1878) 2 Tr. Reg. 94.

15 Scot. L. R. 704, 1 Tax Cas. 207. 3 Form 1040, Instruction 16.

6 Blakiston v. Cooper [1909] A. C.

§ 5Sj MISCELLANEOUS INCOME. 213

operator of the mine.* It was ruled that the profits, on the sale of a patent right, or fraction thereof, are taxable as income ; and are to be estimated by subtracting from the amount received the sums actually expended in purchasing the right, obtaining the patent and perfecting the invention, or a ratable proportion of the same, but no allowance can be made for the time, labor, or personal expenses of the inventor.^ Under previous statutes, it was held, in an inferior court that gains derived from speculation in stocks should not be considered as gains in business, without reference to the time of the purchase thereof.® Interest and dividends derived from stocks which had not been sold, were considered as income derived from fixed investments, without reference to the time during which said stocks had been held.'" When gains derived from the sale of stocks included interest received or accrued, the gains were regarded as derived from the business alone.' Profits realized during the year were returned and assessed without regard to the fact: that they had been produced by the labors of previous years.®' Commissions upon renewal premiums for insurance are treated by the Department as income when received and income for the period in which they are received.*" In a letter to the Collect-ors, Acting Commissioner Williams instructed them as follows : "Returnable and taxable income is that actually realized during the year, that is, that which is evidenced by the receipt of cash or its equivalent. Until any appreciation taken up on the books has been so realized, it will not be required to be returned as income. Hence, in the preparation of returns and in the examination of books for the purpose of verifying the same, mere book entries of appreciation in the value of capital assets will be disregarded." **

*8tratton's Independence v. How- 139. But see Gray v. Darlington^
bert, 231 U. S. 399, 58 L. ed. 285, 15 Wall. 63, 65-67, 21 L. ed. 45, 46,
34 Sup. Ct. Rep. 136 (under Act of quoted supra, § 61.

Aug. 5, 1909) . ■? 3 Int. Rev. Rec. 188.

s Ruling of the CommiBsioner, 1 8 3 Int. Rev. Rec. 188.

Int. Rev. Rec. 188, cf. § 51, supra. 9 2 Int. Rev. Rec. 144.

6 U. S. V. Smith, 12 Int. Rev. Rec. 10 T. D. 2011, July 28, 1914.
135, 138, Fed. Cas. No. 16,341; 3 "Letter of Aug. 14, 1914, supra.
Int. Rev. Rec. 188; 1 Int. Rev. Rec. § 45.

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"The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.

When animals were raised by the owner and are sold or slaughtered he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old." ^*

All of the produce which is paid to a landowner for rent must be included in his income if rents are taxable. The expense of producing it may be deducted by the lessee, but cannot be deducted a second time by the lessor.'*

Under the former internal revenue laws, it was held that a corporation did not escape the tax because it was engaged in a business that was ultra vires)*

In England the profits of a bookmaker at the races were taxed.'*

A Kentucky collector is said to have held that the tax may be assessed upon a man's winnings from cards without deducting his losses.'® Damages recovered for torts are not profits." In Great Britain, it has been held that portions of the Sunday collections, which were paid to the incumbent because he was poor, but which otherwise he would not have received, were not subject to the income tax."

In Victoria, the value of free board and lodging allowed to
18 Form 1040, 1041. Instruction 11. 15 3 Int. Eev. Eec. 100. See supra,
It was so ruled under a former stat- § 41.
ute. 16 Collector Breckenridge, A. D.
13 1 Int. Eev. Eec. 154. 1894.

, 14 Salt Lake City v. HolUster, 118 17 7 Int. Eev. Eec. 60.

U. S. 256, 30 L. ed. 176, 6 Sup. Ct. 18 Turton v. Cooper, 92 L. T. N.

Eep. 1055. S. 863, 5 Tax. Cas. 138 (1905).

§ 59] MISCELLANEOUS INCOME. 215

the taxpayer by a relation is not a part of the former's taxable

income.^®

§ 59, Miscellaneous income of corporations, joint-stock companies or associations, and insurance companies.

The Treasury Eegulations provide as follows:

"Art. 78. 'Corporation' or 'corporations/ as used in these regulations, shall be construed to include all corporations, joint-stock companies or associations, and all insurance companies coming within the terms of the law, and such organizations will hereinafter be referred to as 'corporations.'

"Art. 79. It is immaterial how such corporations are created or organized. The terms 'joint-stock companies' or 'associations' shall include associates, real estate trusts, or by whatever name known, which carry on or do business in an organized capacity, whether organized under and pursuant to State laws, trust agreements, declarations of trusts, or otherwise, the net income of which, if any, is distributed, or distributable, among the members or share owners on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share of capital which each has invested in the business or property of the organization, all of which joint-stock companies or associations shall, in their organized capacity, be subject to the tax imposed by this act."

"Art. 86. Limited partnerships are held to be corporations within the meaning of this act and these regulations, and in their organized capacity are subject to the income tax as corporations."

"Art. 96. The following definitions and rules are given for determining the gross income of various classes of corporations :

"Gross income of banks and other financial institutions consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account, within the calendar or fiscal year for which the return is made.

"Art. 97. Gross income of insurance companies consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown

19 /n re The Income Tax Act, 20 Vict. L. E. 435, 19 A. L. T. 131.

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by the entries on the books of account within the calendar or fiscal year for which the return is made, except as modified by the express exemptions of the articles which apply to mutual fire, mutual marine and life insurance companies."

"Art. 104. Gross income of manufacturing companies shall consist of the total sales of manufactured goods during the year covered by the return, increased or decreased by the gain or loss as shown by the inventories of finished and unfinished products, raw material, etc., at the beginning and end of the year. To this amount should be added the income, gains, or profits from all other sources as shown by the books of account.

"Art. 105. Gross income of mercantile companies shall include the total merchandise sales during the year, increased or decreased by the gain or loss as shown by the inventories of merchandise at the beginning and end of the year for which the return is made ; to this amount should be added the income, gains, or profits derived from all other sources as shown by the books of account.

"Art. 106. Gross income of miscellaneous corporations consists of the total revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources as shown by the books of account.

"Art. 107. It will be noted from these definitions that the gross income embraces not only the operating revenues, but also income, gains, or profits from all other sources, such as rentals royalties, interest, and dividends from stock owned in other corporations, and appreciation in values of assets, if taken up on the books of account as gain; also profits made from the sale of assets, investments, etc.

"Art. 108. For the purpose of determining the income resulting from the sale of capital assets and the amount to be accounted for as income under this act, there shall be included any and all profit resulting from such sale and which may be apportioned to the period during which the corporation tax law (sec. 38, act of Aug. 5, 1909) was in force and effect, which was not returned as income during that period.

"Art. 109. In ascertaining net income derived from the sale

of capital assets, if such assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of profit or loss representing the difference between the selling and buying price is to be prorated to determine the proportion of the gain or loss arising subsequent to January 1, 1909, and the proportionate part belonging to the years subsequent to January 1, 1909, shall be added to or deducted from the gross income for the year in which the sale was made.

"Art. 110. For the purpose of determining the profit or loss arising from the sale of such assets, there shall be added to the price actually realized from the sale any amount which has heretofore been set aside and deducted from gross income by way of depreciation since January 1, 1909, which has not been paid out in making good such depreciation on the property sold.

"Art. 111. In the case of changes in book values of capital assets resulting from a reappraisal of property, the consequent gains or losses shall be computed for the return in the manner prescribed above in the case of the sale of capital assets.

"In cases wherein there is an annual adjustment of book values of securities, real estate and like assets, and the increases and decreases in values, thus indicated, are taken up on the books and reflected in the profit and loss account, such readjusted values will be taken into account in making the return of annual net income and no prorating will be required. If such adjustment had been made annually prior to March 1, 1913, the book value of the assets at that date will be taken as the basis for determining gain or loss resulting from subsequent sale, maturity, or adjustment. The adjustment referred to will comprehend assets which have increased in value as well as those which have decreased.

"Art. 112. Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above, and which are applicable thereto."

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Commissioner Speer defends the inclusion of the increase in the value of the property as income :

"Income from increased property values is a question which has heretofore given rise to considerable discussion as to

whether or not an increase in property values actually constitutes income. There is much of merit on both sides of the discussion. However, for the purposes of the income tax such increases would appear to be properly returnable as income for the following reasons: First, the law provides that accrued income shall be reported. Second, an allowance for depreciation of property is made. As to the first, accruals which are known and ascertained, such as the income which a corporation may derive from any source, which income is definitely ascertained, appears to be returnable. Accruals which arise from an increase in property values are largely a matter of opinion and judgment. The Bureau of Internal Revenue has held in such cases that the matter should be largely within the discretion of the corporation itself. If the corporation recognized an increase in value in any of its properties and recorded such increase in value in its books of account, then such corporation should also report the amount of such increase as income for the year in which the increase was recognized on the books of the corporation.

"That increases in value recognized by book records of such increases should be reported as income is clearly evident in the consideration of the second reason - that is that an allowance for depreciation is provided for by law. This depreciation is based upon the value of the property affected. If this increase in value were not required to be reported or accounted for as income, an irresponsible corporation could, at will, increase the value of its physical assets by recording the fact of such increase on its books from time to time and then absorb the full net income of each year in the allowance for depreciation of such property upon the basis of value as shown upon its books of record. To attempt to ascertain the true net income of more than three hundred thousand corporations upon any such basis would be a practical impossibility." ^

Mr. Walker thus replies, to this proposition: "The first of these 'reasons' is destitute of foundation; for the gross income of a person or corporation, according to the statute, does not include anything but income 'derived' or 'received,' and because, according to

§ 59. iSpeer's Pamphlet, pp. 37, 38.

■§ 59] MISCELLANEOUS INCOME. 219

the statute, the net income of a person or corporation includes nothing not included in the gross income thereof. The second of Mr. Speer's 'reasons,' is destitute of foundation in logic; for the depreciation of property which is allowed for by the statute, is expressly confined to physical depreciation, due to depletion or exhaustion, or to wear and tear, arising out of the use or employment of property. There is no analogy, by way of contract or otherwise, between the statutory allowances for physical depreciation of property, and Mr. Speer's proposition to charge the owner of property with every increase in the value of property, as if that increase were income which ought to be taxed. Property may decrease in physical value, or it may decrease in market value without decreasing in physical

value. On the other hand, very few kinds of property ever increase in physical value, except as a result of expenditure of other property thereon. But Mr. Speer, if permitted, will tax an increase of the market value of a piece of property, as if it were income ; and he undertakes to justify such taxation by an argument from analogy; which argument he draws from the fact that the statute allows deductions from incomes, on account of decreases in physical value of property. But the supposed analogy being absent, the conclusion drawn therefrom is logically vitiated." ^

A recent ruling of the Treasury Department provides : "Returnable and taxable income is that actually realized during the year, that is, that which is evidenced by the receipt of cash or its equivalent. Until any appreciation taken up on the books has been so realized, it will not be required to be returned as income. Hence, in the preparation of returns and in the examination of books for the purpose of verifying the same, mere book entries of appreciation in the value of capital assets will be disregarded.

"It should be understood, however, that in the event of the sale of the assets, the increase in whose value has been taken up on the books, the profit or income to be returned as a result of the sale will be determined upon the basis of the difference between the cost and the selling price of t'^e assets; that is to say, in the case of a sale, book values will be ignored save and except as such book values represent the actual cost of the properties.

"The instructions hereinbefore given will not in any way affect the 'reasonable allowance for depreciation, if any,' which the law authorizes as a deduction from gross income, provided that in computing such 'reasonable allowance for depreciation,' any portion of the book value representing the value of 'Good will,' shall be eliminated from the calculation, an allowable depreciation deduction being an amount properly written ofl! and charged against income to measure the loss due to wear and tear, exhaustion and obsolescence of physical property.

8 Walker's Pamphlet, pp. 72, 73, giving illustrations.

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"Any niKngs previously made by this office and in conflict with the holdings hereinbefore made are superseded by this letter." '

Under the Corporation Tax Law it was held that an increase in the book value of the assets of a corporation or a revaluation of property, does not constitute any part of its income received within the year.*

The Regulations further provide:

"A railroad or other corporation which has leased its properties, in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee directly to the stock

and bondholders, should, nevertheless, make a return of annual net income showing the rental so paid as having been received by the corporation." ^

"A railroad company operating leased or purchased lines shall include all receipts derived therefrom, and, if bonded indebtedness of such lines has been assumed, such operating company may deduct the interest paid thereon to an amount not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year." ^

"Corporations operating leased lines should not include the capital stock of the lessor corporations in their own statement of capital stock outstanding at the close of the year. The indebtedness of such lessor corporations should not be included in the statement of the indebtedness of the lessee unless the lessee has assumed the same. Each leased or subsidiary company will make its own separate return, accounting for therein all income which it may have received by way of dividends, rentals, interest, or from any other source." ^

"A foreign corporation having several branch offices in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return." ' ^

§ 60. Necessary expenses of individuals actually paid in carrying on business. The necessary expenses actually paid in carrying on any business, not including personal, family or living expenses, are deductible. ^ Business is "that which occupies and engages the time, attention, and labor of anyone for the purpose of livelihood, profit, or improvement ; that which is

3 Mimeograph letter to collectors 6 Tr. Eeg. 81.
Aug. 14, 1914, explaining T. D. 2005. TTr. Reg. 82.

4 Baldwin Locomotive Works v. 8 Tr. Eeg. 83.
McCoach, 215 Fed. 967. See § 45, § 60. 1 See § 62, infra.

supra. 2 Act of October 3, 1913, subae-

5Tr. Eeg. 80. tion B.

§ 60] NECESSARY BUSINESS EXPENSES. 221

his personal concern or interest, employment or regular occupation ; but it is not necessary that it should be his sole occupation or employment." ^

These do not include contributions to capital ; * nor, it has been held in Hawaii, the original cost of tools of trade. ^

Such necessary expenses do, however, include the expense of ordinary renewals of office furniture, uniforms of attendants, lugs, awnings, office hardware, door-mats, window-shades, lamps, meters and electrical wires, used in the transaction of the tax-

payer's business,[^] and the replacing of worn-out tools or machinery, so far as the new articles do not exceed the value of the old, but any excess is considered to be a permanent improvement and cannot be deducted.'

"Art. 131. Incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses." The cost of storage and advertising when connected with a business should also be deducted.' Premiums for fire, marine, credit and casualty insurance, when connected with a business, are also proper deductions.[^] So also probably would be premiums upon a life insurance policy, payable at the death of a partner or employee for the benefit of his associates or employer, or at the death of a debtor for the benefit of a creditor whose business is loaning money; but not life insurance premiums paid for the benefit of a man's father or other dependents, nor fire insurance premiums under a policy covering the dwelling-house of the insured. "Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from the gross income for the year in which such costs were paid." ^^ Taxes assessed against the shareholders, paid by a bank or other corporation in pursuance of a State statute, are not deductible by

8Tr. D. 1989. 9 See Foster v. Ooddard, 1 Black,

4 See § 63, infra. 506, 514, 17 L. ed. 228, 230 (an ac-

5 The cost of the instruments and counting) .

books, etc., of a surveyor. Re Smith, W Instruction 18 endorsed upon

16 Hawaii, 796. Form 1040. Selectman of BaiUtt

6 Mutual Benefit Life Ins. Co. v. v. Selectmen of Savoy, 3 Cush. 530, Berold, 198 Fed. 199, 216. 533: "The expenses of protecting

'Ruling 2 Int. Rev. Rec. 61. their interest, involved in a suit at

8 See Foster v. Ooddard, 1 Black law, are surely a necessary expense " 506, 514, 17 L. ed. 228, 230 (an accounting).

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the corporation, but should be included in the individuals' returns. ^^ The rental value of business property occupied by the owner may be deducted in England.^^ Individuals may deduct the cost of daily transportation from their dwellings to their places of business. ^^ A corporation cannot charge the traveling expenses of directors from their residences to the company's office." Subscriptions to an association to indemnify its members for loss by strikes were disallowed. '° It has been held, in Great Britain, that the expense of collecting rents

cannot be deducted,^^ unless they were necessarily incurred " but in the United States they have been allowed.^* Where a premium was paid for a lease, it was held that it could not be considered as rent paid in advance, nor could any part thereof be deducted as an annual expense, but that the lessee might deduct the fair rental value of the premises if greater than the rent actually paid.'® A brewing company was allowed to deduct the amount spent upon houses which it let to its tenants ; ^'' but not the cost of applications for additional licenses for its own houses and those of its customers, these being considered capital.^' A mortgage company for the same reason was not allowed to deduct the commission paid brokers and other expenses of raising money loaned by it. ^^ Deductions were allowed for the expenses of weeding and watching a nursery, the trees on which could not bear for several years, when it was part of a plantation.^*

11 T. D. 1763. So held under Cor- 18 Ruling, 3 Int. Rev. Rec. 102.

poration Tax Law. Eliot Nat. Bank 19 Gillat v. Golquhon, 33 Week.

V. Gill, 210 Fed. 933; Northern Trust Rep. 258 (1885).

Co. V. M'Goach, 215 Fed. 991. 1^0 Smith v. Lion Brewery Co. 80'

^^ Russell V. Town, dc, Bank, L. L. J. K. B. N. S. 566 [1911] A. C.

R. 13 App. Cas. 418. But see In- 150, 104 L. T. N. S. 321, 75 J. P.

struction 10 endorsed on Form 1040, 273, 55 Sol. Jo. 269, 27 Times L.

quoted, inira, § 62. R. 261, 5 Tax Cas. 568, H. L. (E).

13 Ruling, 1 Int. Rev. Rec. 172; !^^ Southwell v. Savill Bros. [W0\}

7 Int. Rev. Rec. 60; infra, § 62. 2 K. B. 349, 70 L. J. K. B. N. S.

14 Revell V. Directors of Elworthy 815, 85 L. T. N. S. 167, 49 Week.

Brothers & Co. (1890) 3 Tax Cas. Rep. 682, 4 Tax Cas. 430.

12. 22 Texas Land and Mortgage Co.

li Rhymney Iron Co. v. Fowler v. Holtham (1894) 63 L. J. Q B.

[1896], 2 Q. B. 79, 65 L. J. Q. B. N. S. 496, 10 Times L. R. 337, a

N. S. 524, 44 Week. Rep. 651, 3 Tax Tax Cas. 255.

Caa. 476. 23 Vallamhrosa Rubier Co. v. Far-

leOiike of Norfolk v. Larnarque, mer [1910] S. C. 519, 47 Scot. L.

L. R. 24 Q. B. Div. 485 (1890). R. 488, 5 Tax Cas. 529.

11 Stevens v. Bishop, L. R. 20 Q.

B. Div. 442 (1888).

§ 61] EXPENSES OF COEPOEATIONS. 223

§ 61. Necessary expenses of corporations. The Treasury Regulations, as to corporations, provide:

"Art. 114. Expenses of operation a,nd maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of the goods sold or inventoried at the end of the year, and all other expenses incurred in the operation of the business except such as are required by the act to be segregated in the return.

"Art. 115. The cost of erecting permanent buildings on ground leased by a company is a proper deduction as a rental charge, provided such buildings are left on the ground at the expiration of the lease as a part of the rental payment. In such case the cost will be prorated according to the number of years constituting the term of the lease and the annual deduction will be made accordingly.

"Art. 116. General expenses, such as coal, ship stores, etc., of foreign steamship companies, shall be prorated as provided in the act for interest deductions in the case of foreign corporations.

"Art. 117. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books at the actual value of such stock.

"Art. 118. Amounts expended in additions and betterments which constitute an increase in capital investment are not a proper deduction.

"Art. 119. Amounts paid as compensation or additional compensation to oflBcers or employees, which amounts are based upon the stockholdings of such ofjicers or employees, are held to be dividends, and although paid in lieu of salaries or wages, are not allowable deductions from gross income, for the reason that dividends are not deductible.

"Art. 120. Amounts paid for pensions to retired employees, or to their families, or others dependent iipon them, or on account of injuries received by employees, are proper deductions as 'ordinary and necessary expenses ; ' gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income.

"Art. 121. Donations made for purposes connected with the operation of the property when limited to charitable institu-

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tions, hospitals, or educational institutions, conducted for the benefit of its employees, or their dependents, shall be a proper

deduction for ordinary and necessary expenses."

Under the Corporation Tax Law it was held that money paid out for charities cannot be deducted as a part of the "expenses actually paid within the year out of income." ^

It has been ruled: that "This office has consistently held and still holds that in cases where these increased compensations, denominated as bonuses or profit sharings, are paid to the employees pursuant to a contract as between the employees and the corporation, the amounts so paid will be considered an ordinary and necessary expense of operation of business, and as such will constitute an allowable deduction from gross income of the corporation making such payments. If, however, there is no contractual relation between the employee and the employer by reason of which the employee could enforce his claim for the additional compensation, it is held that these payments are gratuities on the part of the corporation and as such are not allowable deductions from gross income." "

"Art. 122. Funds set aside by a corporation for insuring its own property are not a proper deduction, but any loss actually sustained and charged to such fund may be deducted.

"Art. 123. In ascertaining expenses proper to be included in the deductions to be made under the item of 'Expenses,' corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made."

"Art. 126. Reserves to take care of anticipated or probable losses are not a proper deduction from gross income."

"Art. 131. Incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses."

The Department permits co-operative dairies to include in their deductions the amount actually paid members and patrons

§ 61. 1 Baldwin Locomotive Works claims to Secretary Alexander Hamilton McGoach, 215 Fed. 967. 1st Circuit June 25, 1914.

2 Letter of Acting Comm'r Wil-

§ 62J PERSONAL AND FAMILY EXPENSES. 225

for milk.' It has been held that where the ordinary business of a corporation is the purchase, sale, lease and management of land, interest upon bonds secured by a mortgage upon its land is deductible as ordinary and necessary expenses in the maintenance and operation of its business and as charges required to be paid as a "condition of the continued use or possession"

of its property.*

§ 62. No deduction of personal living and family expenses. Personal living and family expenses are not deducted.* The Department has ruled:

"Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income." In case an individual owns his own residence he can not deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income,^ that traveling expenses of those who transact business in the city and live in the suburbs ' but usually not hotel bills,* nor it was held in England the railroad fares of a public officer who did not live where the office was situated * may be deducted. In Great Britain the wages of a domestic servant, whose employment was necessary to supply the place of the taxpayer's wife who taught school, were not deducted.®

3 T. D. 1996, June 15, 1914. land, Wylie v. Eccott, Ct. Sess. S.

* Anderson v. Forty-Second Broad- C. 16 (1913) ; but that he could not
loay Co. (C. C. A. 2d Ct.) 213 Fed. charge for rent of the house which
777; affirming Forty-Second Broad- he and his family occupied unless he
way Co. V. Anderson, 209 Fed. 991. returned as income the rental value
■Certiorari granted by S. C. U. S. of any homestead that he owned, 5
Oct. 26, 1914. Int. Rev. Rec. 154; that when he

§ 62. 1 Act of October 3, 1913, rented a furnished house, rent for the
subsection B. furniture should not be deducted, 7

2 Instruction 10 endorsed on Form Int. Rev. Rec. 59.

1040. Under earlier statutes, which 3 Ruling, 1 Int. Rev. Rec. 172;

allowed the deduction of the rental Ruling, 7 Int. Rev. Rec. 60.

value of a homestead owned by the * Ruling, 7 Int. Rev. Rec. 59.

taxpayer, it was ruled that, where ^ Cook v. Knott, 4 Times L. R.

lie rented his homestead and paid 164, 2 Tax Cas. 246 (1887).

rent elsewhere, he must return the ^Bowers v. Harding [1891] 1 Q.

rent received, but would be allowed B. 560, 60 L. J. Q. B. N. S. 474,

to deduct the amount of rent paid; 64 L. T. N. S. 201, 39 Week. Rep.

4 Int. Rev. Rec. 46. Contra, in Scot- 558, 3 Tax Cas. 22.
Foster Income Tax. - 15.

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In Great Britain, a minister was allowed to deduct from his salary the expense of visiting members of his congregation/ including the cost of keeping a horse and carriage for that purpose,* the expense of attending church meetings,^ for stationery ^^ and for communion expenses ; ^' but not the rental value of part of his dwelling-house used as an office for the performance of his professional duties,^^ nor for the expenses of books,*^ nor expenses incurred in obtaining an increase of salary,'* nor for outlays for pulpit supplies during his holidays.'^ Contributions by employees of a municipality to a thrift fund for their own benefit were held not to be deductible.'^

§ 63. Contributions to capital. Although it may be that losses or capital can be deducted,' contributions to new capital cannot. Such have been held to be sums paid for the purchase of new business : as payments for good will ^ or for the transfer of a concession ; ' payment upon the transfer to the manager of the business purchased of a commutation for salary promised,* guaranteed interest paid, during the construction of new works, to shareholders of companies thus purchased,' the cost of moving a business and the machinery therewith connected,® at least when not necessitated by a fire, contributions

7 Charlton v. Commissioners of In- C. 77, 44 Scot. L. R. 136, 5 Tax Cas.
land Revenue (1890) 17 R. 785, 27 263.

Scot. L. R. 647. I6i6id.

iJarding v. Gillespie [1907] S. ^^ Hudson v. Cribble [1903] 1 K.

C 77, 44 Scot. L. R. 136, 5 Tax B. 517, 72 L. J. K. B. N. S. 242, 88
Cas. 263. L. T. N. S. 186, 51 Week. Rep. 457,

9 Charlton v. Com/missioners of 4 Tax Cas. 522. Contra, Beaumont

Inland Revenue (1890) 17 R. 785, v. Bowers [1900] 2 Q. B. 204.

27 Scot. L. R. 647. § 63. 1 See infra, § 47.

ID Charlton v. Commissioners of ^5 Int. Rev. Rec. 188.

Inland Revenue (1890) 17 R. 785, ^London Bank of Mexico and

27 Scot. L. R. 647. South America v. Apthorpe [1891],

11 Charlton v. Commissioners of 2 Q. B. 378, 60 L. J. Q. B. N. S.
Inland Revenue (1890) 17 R. 785, 653, 65 L. T. N. s. 601, 39 Week.
27 Scot. L. R. 647; Jarding v. Oil- Rep. 564, 3 Tax Cas. 143.

lespie [1907] S. C. 77, 44 Scot. L. * Royal Insurance Co. v. Watson

R. 136, 5 Tax Cas. 263. [1897], A. C. 1, 66 L. J. Q. B. N. S.

12 Charlton v. Commissioners of 1, 75 L. T. N. S. 334, 3 Tax Cas.
Inland Revenue (1890) 17 R. 785, 500.

27 Scot. L. R. 647. 6 City of London Contract Corpo-

13 Charlton v. Commissioners of ration v. Styles (1887) , 4 Times L.
Inland Revenue (1890) 17 R. 785, R. 51, 2 Tax Cas. 239.

27 Scot. L. R. 647. ^ Granite Supply Association v.

1*Jarding v. Gillespie [1907] S. Kitton (1905), 8 F. 55, 43 Scot. L.

§ 64] DEPEECiATioiir. 22Y

to a sinking fund,' and to a repair fund,' the expense of imr
proving the roadbed of a railroad or replacing its line with
steel in place of iron rails and chairs of additional weight,' the
cost of brewers' printing and advertising in connection with
applications for additional licenses for houses owned and leased
by them and also for houses of their customers ; *" a bonus paid
or agreed to be paid when capital was borrowed ; ^^ and the
price of a seat in an exchange. ^^ According to the Treasury
Eegulations :

"Art. 115. The cost of erecting permanent buildings on
ground leased by a company is a proper deduction as a rental
charge, provided such buildings are left on the ground at the
expiration of the lease as a part of the rental payment. In
such case the cost will be prorated according to the number of
years constituting the term of the lease and the annual deduc-
tion will be made accordingly."

"Art. 118. Amounts expended in additions and betterments
which constitute an increase in capital investment are not a
proper deduction."

§ 64. Deductions for depreciation. In computing the net
income of individuals for the purpose of the normal tax, there
are allowed as deductions: "sixth, a reasonable allowance for
the exhaustion, wear and tear of property arising out of its use
or employment in the business, not to exceed, in the case of
mines, 5 per centum of the gross value at the mine of the out-
put for the year for which the computation is made, but no de-
duction shall be made for any amount of expense of restoring

R. 65, 5 Tax Cas. 168; Smith v. a new wooden bridge. Hawaiian C

Westinghouse Brake Co. 2 Tax Cas. tñ S. Co. v. Assessors, 14 Haw. 601,

357; Dowell on Income Tax, 7th ed., 687.

p. 117, note. 10 Southwell v. Savill Brothers

7 City of Dublin Steam Packet Co. [1901], 2 K. B. 349, 70 L. J. K

V. O'Brien (1912), 6 Tax Cas. 101; B. N. S. 815, 85 L. T. N. S. 167, 49

Re Taxes Honolulu Rapid Transit Week. Rep. 682, 4 Tax Cas. 430.

tj L. Co., 18 Haw. 15, 666. n Arizona Copper Co. v. Smiles

'Ruling, 2 Int. Rev. Ree. 100. (1891), 29 Scot. L. R. 134, 3 Tax

9 Highland Ry. Co. v. Balderston Cas. 149. See Texas Land a/nd Mort-

(1889), 26 Scot. L. R. 657, 2 Tax gage Go. v. Holtham (1894), 63 L.

Cas. 485; In Re Income Tax Ap- J. Q. B. N. S. 496, 10 Times L. R.

peal Gases, 18 Haw. 596, held that 337, 3 Tax Cas. 255.

no deduction can be made for the 12 in Re The Income Tax Acts, Ex

replacement of a steel by a wooden parte C. B., 20 A. T. L. Vict. 50, 4

bridge beyond the estimated cost of A. L. R. Vict. 231.

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property or making good the exhaustion thereof for which an allowance is or has been made: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate." ^

The Act further provides : That in ascertaining the net income of corporations, joint-stock companies or associations, or insurance companies, there shall be deducted "a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made."^ The concluding clauses of the provision concerning the deductions for individuals are omitted. According to the Treasury Regulations :

"Art. 127. Loss due to voluntary removal of buildings, etc., incident to improvements is either a proper charge to the cost of new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation of the new building. Any loss claimed because of the voluntary removal of a building is presumed to have been covered by previous depreciation charges ; otherwise the amount of such

Joss will constitute a part of the cost of the new building.
' "Art. 128. All losses claimed arising from sale of capital assets should be arrived at in the manner prescribed in article 109, defining gains arising from sale of capital assets.

"Art. 129. The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should be formed upon the assumed life of the property, its

§ 64. 1 Statute Subsection B. ii Ibid. G. (b.)

§ 64] DEPEECIATION. 229

cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years.^

"Art. 130. The depreciation allowance, to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and shoield be so entered on the books as to constitute a liability against the assets of the company, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost."

The following instructions have been given by the Department:

"It has come to the notice of this ofiiice that, in the examination of the books of corporations for the purpose of verifying their returns of annual net income, revenue agents and examining officers have, in many cases, declined to allow deductions on account of depreciation, simply and only because the amounts claimed in the returns on this account were not written off on the books of the companies. This conforms technically with the rules of this office, requiring all deductible items to be evidenced by book entries.

"However, the special excise tax law (Section 38, Act of August 5, 1909) and the Federal income tax law (Section 2, Act of October 3, 1913) authorize corporations to deduct from

3 "Deduction on account of depre- in the value of real estate acquired!
oiation of property must be based in previous years, sold or held for
on lifetime of property, its cost, sale, is taken up on the booljs and
value, and use, and must be evi- the rate cannot be accurately deter-
denced by a ledger entry and a like mined with respect to individual
reduction in the plant and property years, such increase or decrease may
account vi^ith respect to which the be prorated as provided by regula-
depreciation is claimed." "Where tions in cases of sale of capital as-
increase or decrease during the year sets." Synopsis T. D. 1742.

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gross income 'a reasonable allowance for depreciation, if any.'
Neither of these laws specifically require that, in order to se-
cure deduction on this account, the amount claimed must be
written off.

"It has nevertheless been consistently held by this office that
a depreciation deduction, in order to be allowable, must be a
fair measure of the loss sustained by reason of the wear and
tear, exhaustion, or obsolescence of the property, and must be
so entered upon the books of the company as to constitute a
liability against its assets.

"Such 'reasonable allowance' is to be determined upon the
basis of the cost and probable number of years constituting the
life of the property with respect to which it is claimed.

"Because of the fact that the law does not specifically require
amounts, otherwise deductible, to be written oft', many corpora-
tions included in their deductions from gross income reasonable
allowances for depreciation, of which there was no evidence
on their books.

"It is not the desire of this office to deny, upon purely techni-
cal grounds, a deduction which the law authorizes and which
conforms, or may be made to conform, to the regulations.
Revenue agents and examining officers, in the examination of
the books of a corporation, will, therefore, determine whether
or not the deduction claimed in its return is a fair and reason-
able measure of the loss sustained during the year, and, if they
find that the amount claimed in a return is such fair and rea-
sonable measure of the loss and that it was not written off on
the books of the company, they will permit the corporation to
reopen its books, if it so desires, and make such entries as will
constitute the amount, sought to be deducted, a liability against
the assets of the company and a charge against the income of

the year for which the return is made. Sufficient time to make such correcting entries should be given the corporation before the report of the examination is made to this office, and any recommendations as to additional taxes should be made accordingly.

"If a corporation refuses or neglects to reopen its books and write off the depreciation claimed in the return, or a reasonable amount measuring the loss sustained on this account, the

§" 64] DEPEECIATIOIT. 231

amount claimed in the return will be disallowed. The correcting entries for each year, if made, must be such as would have been made had they been made at the time the books were ■closed.

"The foregoing instructions do not contemplate that a depreciation deduction is to be allowed in every case simply because it is written oif. If, upon examination, taking into account the character of the property and the uses to which it is put, it appears that the amount written off and deducted in the return is in excess of a reasonable allowance within the law, the excess should be disallowed.

"When the amount claimed for depreciation has been written off on the books of the company, either prior or subsequent to the making of the return, it remains for the revenue agent and the examining officer to determine whether or not this amount is such as, within the meaning of the law and regulations, constitutes an allowance deduction, and, if it does, it should be allowed and report made accordingly." *

"Art. 131. Incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses.

"Art. 132. Depreciation set up on the books and deducted from gross income can not be used for any purpose other than making good the loss sustained by reason of the wear and tear, exhaustion, or obsolescence of the property with respect to which it was claimed. If it develops that an amount has been reserved or deducted in excess of the loss by depreciation, the excess shall be restored to income and so accounted for.

"Art. 183. If any portion of the depreciation set up is diverted to any pui-ose other than making good the loss sustained by reason of depreciation, the income account for the year in which such diversion takes place must be correspondingly increased.

"Art. 134. Depreciation in book values of capital assets shall be treated in the return in the manner prescribed in the case of loss from the sale of capital assets (art. 109), but

■4C. T. Mim. 1077, Aug. 27, 1914, Corp. Tr. Co. Eec. 307.

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amounts arbitrarily charged off will not be allowed as deductions except so far as they represent an actual shrinkage in values which may be determined to have taken place during the year for which the return is made." * It has been subsequently ruled that losses due to fluctuations during a taxable year in the value of capital assets, although evidenced by book entries, cannot be deducted from gross income. The Treasury Regulations further provide :

"Art. 135. Where a corporation holds bonds which were purchased at a rate above par and said corporation shall proportionately reduce the value of those bonds on its books each year so that the book value shall be the redemption value of the bonds when such bonds become due and payable, the return of annual net income of the corporation holding such bonds may show the depreciation on account of amortization of such bonds. The requirement is, however, that the amount carried to the amortization account each year shall be equitably proportioned with respect to the difference between the purchase price and the maturing value and the number of years to elapse until the bonds become due and payable. With respect to bond issues where such bonds are disposed of for a price less than par and are redeemable at par, it is also held that because of the fact that such bonds must be redeemed at their face value, the loss sustained by reason of their sale for less than their face value may be prorated by the issuing corporation in accordance with the life of the bond.^

5 Under the Corporation Tax Law time, seems to me without force, of 1909 it was ruled: "Premiums The books may be very badly I<ept, on stocks and bonds arbitrarily kept in such a way as will in the charged upon the books of a corpo- end bring them into trouble and ration do not constitute a proper difficulty; but this act does not pro- deduction on account of deprecia- vide any penalty for bad bookkeep- tion, unless there shall have been an ing. It simply provides that 1 per actual shrinkage in value of such cent, of the net profit of the various stocks and bonds to the extent of corporations shall be turned over to the deduction claimed during the the government, and provides that year for which the return is made." in finding out that net profit there Synopsis T. D. 1742. Under the shall be a reasonable allowance for same Act of 1909 it was said depreciation." U. S. v. Nippissing by Lacombe, J.: "The su'j;gestion Mines Co. 202 Fed. 803, 804. See that there can be no allowance Stratton's Independence v. Howbert, for depreciation unless such depre- 2,31 U. S. .399, 407, 422, 58 L. ed. elation is entered in the books of 285, 289, 295, 34 Sup. Ct. Rep. 136. the company, recorded from time to 6 Under the Corporation Tax Law

§ 64] DEPEECIATION. 23S

"Art. 136. 'Good will' represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed.

"Art. 137. An allowance for depreciation of patents will be made on the following basis :

"The deduction claimed for exhaustion of the capital assets. as represented by patents to be made in the return of annual net income of a corporation for any given year shall be one-seventeenth of the actual cost of such patents reduced to a cash basis. Where the patent has been secured from the Government by a corporation itself, its cost would be represented by the various Government fees, cost of drawings, experimental models, attorneys' fees, etc. Where the patent has been purchased by the corporation for a cash consideration, the amount would represent the cost. Where the corporation has purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities, at the time of the purchase will represent the cost of the patent to the corporation.

"Art. 138. With respect to the depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the corporation. Where the value of a patent has disappeared through obsolescence or any other cause and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss and be deducted from gross income in the return of annual net income for the year during which the facts as to obsolescence or loss

of 1909 it was ruled: "In the ease ment, there will be neither gain nor of corporations owning stocks and loss, as to the principal of such securities, if an an- curities, until the same shall have- annual adjustment of the value of such been disposed of, when the gain or securities is made and the adjusted loss as compared with the original values made a matter of ledger en- cost shall be prorated, and the try, the appreciation of such securi- amount of such gain or loss appor- ties as so entered must be accounted tioned to the years since the inci- for as income, and the depreciation dence of the tax, to wit, January 1, may be deducted from gross income. 1909, shall be added to or deducted If no annual adjustment is made, from the gross income of the year and the securities are carried from in which the securities were so dis-

year to year as a permanent invest- posed of." Synopsis T. D. 1742.

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shall be established, such unreturned cash value to be fixed in accordance with the proportion that the number of years which the patent still has to run bears to the full patent period of 17 years.

"Art. 139. Corporations owning tracts of timber lands and removing therefrom and selling, or otherwise disposing of the timber will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income. The purpose of the depreciation or depletion deduction is to secure to the corporation, when the timber has been exhausted, an aggregate amount which, plus the salvage value of the land, will equal the capital actually invested in such timber and land.

"Art. 140. When an amount sufficient to return this capital has been secured through annual depreciation deductions no further deduction on this account shall be allowed. For the purpose of increasing the deduction on this account no arbitrary increase in values shall be made, unless such increase in value shall be returned as income for the years in which the increase in value was taken up on the books.

"Art. 141. The depreciation of coal, iron, oil, gas, and all other natural deposits must be based upon the actual cost of the properties containing such deposits. In no case shall the annual deduction on this account exceed 5 per cent of the gross value at the mine (well, etc.) of the output for the year for which the computation is made.

"Art. 142. The term 'gross value at the mine,' as used in paragraphs B and G of section 2 of the act of October 3, 1913, prescribing a limit to the amount which may be deducted in the return of individuals and corporations as depreciation in the case of mines, is held to mean the market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some place other than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas

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sold, or of the metal produced, less transportation, reduction, and smelting charges.

"If the rate of 5 per cent per annum shall return to the cor-

income as depreciation or loss." *

Under the Corporation Tax Law of 1909, it was ruled:

"Depreciation to be an allowable deduction in the return of annual net income of a corporation must be charged off on the ledger of the corporation, so as to show a reduction in the capital assets of the corporation to the extent of the depreciation claimed." * "Depreciation of company's stock a loss to the stockholders, but not a loss to the company issuing the same, and therefore not a proper deduction." ^^

It has been held in Great Britain : That a depreciation in the value of machinery due to a removal of the works is a loss of capital and is not deductible as a loss of income; and the deduction for wear and tear is a deduction for diminished value as a means of earning income and not as a salable subject ; ^^ that a railway company, consequently, can make no deduction for the purchase of new rolling stock ; *^ that a diminution in market value, apart from that caused by wear and tear, cannot be allowed ; ^^ that a loss of earning power, caused by the fact that a ship had become more or less obsolete, cannot be allowed.'* When the operation of a street railway company had been changed from horse to electric power in England, no deduction was allowed for horse cars which, although not worn out, had been discarded, nor for so much of the track as had been reconstructed, although its life was below the average life of

8 T. D. 2005 ; Letter of Acting 14 Burnley Steamship Co. v. Aikin Commissioner Williams to collect- (1894) 21 E. 965, 31 Scot. L. E. ors, Aug. 4, 1914. 803, 3 Tax Cas. 275. The loss of a

9 Synopsis T. D. 1742. steamer, which became unseviceable

10 Ibid. by reason of the requirements of the

11 Smith V. Westinghouse Brake Federal inspectors, was held not to Co. 2 Tax Cas. 357. be deductible, the court reserving

12 Galendonian By. Co. v. Banks its opinion as to the propriety of (1888) E. 59, 18 Scot. L. E. 85; 1 the deduction of the cost of a new Tax Gas. 487. steamer bought to replace the same.

13/iid. Be Wilder's 8. S. Co. 16 Haw. 567.

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rails. ^^ So, in Hawaii, that a deduction cannot be made for the loss by reason of the abandonment of an old mill, which is in good condition, although a new one has been made.^* It is not the custom in Great Britain to allow the amount spent by the owner of a mine in making bores and sinl^ing pits which are exhausted in the year." A charge on the books of the corporation of a depreciation fund, to be expended in future years in the restoration of the plant, does not entitle the taxpayer to a deduction, unless the depreciation has actually occurred.^'

Where a premium was paid upon the purchase of a lease, the buyer was not allowed to deduct from the remainder of the "term any portion thereof.^®

In Great Britain, the practice of the Inland Revenue Department has been to make allowances for wear and tear: to railway companies upon cars and engines; to gas companies upon gas meters and pipes; to water and oil companies upon reservoirs, tanks and pipes; to engineering and electrical companies on dynamos, motors, batteries, engines and their accessories; to telegraph companies upon wires and cables; to street railroad and stage companies upon horses and vehicles ; to shipping companies upon ships; to carriers on horses, carts, boats and automobiles ; to metal refiners upon engines, furnaces and boilers; to telephone and typewriting companies upon machines ; to hotel companies upon billiard tables ; to airmen upon balloons and aeroplanes ; to lawyers and clergymen upon books ; to physicians and dentists on surgical implements and appliances, operating chairs, and to physicians also in some cases

^^ London County Council v. Ed- land Revenue (1875) 2 E. 431, 12 wards (1909) 100 L. T. N. S. 444, Scot. L. R. 274, 1 Tax Gas. 1. See 73 L. J. Prob. N. S. 213, 25 Times Movant v. Wheal Qrenville Mining X. E. 319, 5 Tax Cas. 383. Co. (1894) 71 L. T. N. S. 758, 3 16 Hawaiian C. & 8. Co. v. Asses- Tax Cas. 298. sors, 14 Haw. 601, 687, Ann. Cas. 18 Clayton v. N ewcastle-under- 191 3C, 980. See Re Income Tax Lyme Corporation (1888) 2 Tax Appeal Cases, 18 Haw. 596. Cas. 416.

17 CoZtwess Iron Co. v. Black ^^Watney v. Musgrave (1880) L. (1881) L. E. 6 App. Cas. 315, 51 E. 5 Exch. Div. 241, 49 L. J. Exch. L. J. Q. B. N. S. 626, 45 L. T. N. S. N. S. 493, 42 L. T. N. S. 690, 28 145, 29 Week. Eep. 717, 1 Tax Cas. Week. Eep. 491, 1 Tax Cas. 272; 287; Bonner v. Bassett Mines, Li/m- Gillatt & Watts v. Colquhoun ited. Law Times, Dec. 21st, 1912, p. (1884) 33 Week. Eep. 258, 2 Tax 179; Addie & Sons v. Solicitor of In- Cas. 76.

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upon horses, carriages and automobiles used in professional visits.^"

§ 65. Deductions by individuals for interest. Deduc- tions for interest when paid by individuals and by corporations, joint-stock companies or associations, or insurance companies, are regulated by different rules. An individual can deduct all interest paid by him within the year upon indebtedness.^ Ac- cording to the Deputy Commissioner of Internal Revenue,

"This, of course, would be confined to the interest paid within the year on the indebtedness of the taxable person and naturally, in the ascertainment of the income for any one year, should not include any interest which had accumulated and had been payable in previous years." ^ This statement is criticized by Mr. Albert H. Walker as follows : "In order to make the statute convey Mr. Speer's idea, it would have to be amended by inserting after the word 'year,' the words 'and not payable in any previous year.' Neither Mr. Speer nor anybody else has any authority to amend the statute by any such limitation." ^

§ 66. Deductions for interest by corporations, joint-stock companies or associations, and insurance companies. Different rules regulate deductions for interest by corporations, joint-stock companies or associations. One of these may deduct only "the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year." ^ According to the Treasury Regulations, "the maximum principal, upon which interest for the purpose of this deduction, can be computed must not exceed, in the one case, one-half of the sum of the interest-bearing indebtedness and the capital stock outstanding at the close of the year, or, in the other case, must not exceed the amount of capital employed in the business

20 Jarvis, Income Tax, 47, 48. 2 Speer's Pamphlet, p. 15.

§ 65. 1 Act of October 3, 1913, 3 Walker's Pamphlet, p. 67. Subsection B. § 66. 1 Statute, Subsection G (b).

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at the close of the year." * The language of the statute does not clearly indicate whether the phrase "one-half of the sum of" qualifies the phrase "its paid-up capital stock outstanding at the close of the year;" or, in other words, whether, in ascertaining the amount of indebtedness interest whereupon can be deducted, the whole, or one-half of, the amount of the outstanding paid-up capital stock should be added to one-half of the sum of the interest-bearing indebtedness. It has been ruled by the Treasury Department as follows : "It is held that in the case of a corporation having capital stock, this deductible interest is interest actually accrued and paid within the year, on an amount of indebtedness not exceeding the paid-up capital stock outstanding at the close of the year, increased by the addition thereto of one-half the interest-bearing indebtedness outstanding at the close of the year. The qualifying phrase 'outstanding at the close of the year' appearing in the foregoing quotation, is held to apply to both paid-up capital stock and indebtedness, and 'one-half the sum of' qualifies only the indebtedness, which indebtedness, like the paid-up capital stock,,

is required by the law to be reported, in making return of annual net income, as outstanding at the close of the year. If no indebtedness is outstanding at the close of the year, the maximum deduction allowable on account of interest paid, will be the amount of interest actually accrued and paid on an amount of indebtedness not exceeding at any time within the year, the entire paid-up capital stock outstanding at the close of the taxable year, that is, in such case, the paid-up capital stock outstanding at the close of the year, measures the highest amount of indebtedness upon which deductible interest can be computed. For the purpose of an allowable deduction, interest on the maximum amount of indebtedness, determined in the manner above indicated, can be computed upon such amount only for the time during which such amount of indebtedness is not in excess of the paid-up capital stock increased by one-half the sum of the interest-bearing indebtedness outstanding at the close of the year.

"In any event, the amount of interest, in order to constitute 2Tr. Reg. 148.

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an allowable deduction, must not only be within the limit of the law as herein defined, but must have actually accrued and been paid within the year for which the return is made.

"In cases where no capital stock exists, the limitation as to •deduction is confined to interest actually paid on an amount of indebtedness not exceeding at any time during the year, the ■capital employed in the business at the close of the year.

"Any provision in the Regulations heretofore issued inconsistent with the foregoing, is hereby revoked." *

The Treasury Regulations provide:

"Full amount of stock, as represented by the par value of the shares issued, is to be regarded as the paid-up capital stock, ■except when such stock is assessable on account of deferred payments, or payable in instalments, in which case the amount actually paid on such shares will constitute the actual paid-up •capital stock of the corporation." "The interest to be deductible must have been computed on the proper principal at the contract rate and must have been actually paid within the year." ^'Interest paid pursuant to contract on an indebtedness secured by mortgage on real estate occupied and used by a corporation, in which real estate the corporation has no equity or to which it is not taking title is an allowable deduction from gross income as a rental charge, payment of which is required to be made as a condition to the continued use and possession of the property. If, however, the corporation has an equity in or is purchasing for its own use the real estate upon which such mortgage is a prior lien, the indebtedness will be held to be in-

debtedness of the corporation within the meaning of the law and the interest paid on such mortgage will be deductible only to the extent that it, with interest on other obligations of the corporation, is within the limit fixed by the act." *

"Art. 151. Interest on bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year,' provided the aggregate amount of such indebtedness on which the interest is paid does not exceed the limit prescribed by law, and in case the indebtedness is in excess of the amount on which interest may be legally deducted the in-

» T. D. 1960. 4 Tr. Reg. 150.

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debtedness bearing the highest rate may be first considered in computing the interest deduction and the balance, if any, will be computed upon the indebtedness bearing the next lower rate actually paid, and so on until interest on the maximum principal allowed has been computed."

The statute next directs: "Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business.'" According to the

S Statute, Subsection G (b). This exemption was added in the Senate at the following suggestion of the Investment Bankers' Association of America, made by Mr. Robert Eeed, Counsel for the Association: "We do not oppose the general policy of prohibiting the deduction from gross income of interest on indebtedness created in excess of the capital stock. Such a provision has a tendency to discourage the creation of indebtedness above

the capital stock, but it also has a tendency to encourage the watering of capital stock so as to permit a large indebtedness. But there are certain businesses, of which the banking business is one, which from their very nature necessitate the carrying of a debt very much in excess of the capital of the corporation. This is true of all corporations the business of which involves the purchase and sale of property of relatively large value. It includes the banking house, the dealer in precious gems, or any other dealer whose stock in trade must necessarily be large. It is the practice in all such businesses to carry the stock in trade under loans with banks secured by collateral of various kinds, including warehouse receipts. Such a business having a capital, say, of \$100,000 would ordinarily carry stock of a value of five to ten times that amount. We Foster Income Tax. - 16.

are quite sure that it was never the intention of the corporation-tax law to prohibit the deduction from the gross income of the interest necessarily paid in carrying a stock in trade. Referring exclusively to the investment banking business, we would say that it is not unusual for a banking house with a capital of, say, \$1,000,000 and a surplus of an equal amount to be carrying at the banks high-class securities of a value, say, of \$10,000,000, against which the banks would advance \$8,000,000. The interest received on the collateral carried would be a part of the gross income of the banking house, and amount to approximately \$.500,000. The interest paid to the bank on the loan of \$8,000,000 would be a necessary expense to the business of the banking house, and would amount to approximately \$400,000. From the gross income of \$500,000 the bank would only be permitted to deduct its interest on an indebtedness of \$1,000,000, that is \$50,000, and it

would have to pay a tax on \$450,-
000, amounting to \$4,500 a year, al-
though its net income from the situ-
ation stated would be only \$100,000
a year. On this income it would
pay a tax of 44 per cent instead of
1 per cent. The same situation ap-
plies to all companies similarly sit-
uated, large and small. The injus-
tice of this provision in the pending

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Treasury Regulations this contemplates that the entire interest received on the collateral securing such indebtedness shall be included in the gross income returned.^

"Provided further, That in the case of bonds or other indebt-
edness, which have been issued with a guaranty that the in-
terest payable thereon shall be free from taxation, no deduction
for the payment of the tax herein imposed shall be allowed:
and in the case of a bank, banking association, loan, or trust
company, interest paid within the year on deposits or on moneys
received for investment and security by interest-bearing cer-
tificates of indebtedness issued by such bank, banking associ-
ations, loan or trust company." ''

A foreign corporation, joint-stock company or association,,
can deduct only "(third) the amount of interest accrued and
paid within the year on its indebtedness to an amount of such
indebtedness not exceeding the proportion of one-half of the
sum of its interest-bearing indebtedness and its paid-up capital
stock outstanding at the close of the year, or if no capital stocky
the capital employed in the business at the close of the year

tax as applied to such corporations Either or both of these provisions
is, we believe, too manifest to re- would seem to be proper as amend-
quire further argument. This injus- ments to the pending bill. The law
tiee could be cured by the insertion as it now stands is in this respect
of an amendment on page 147, fol- a tax upon income that is not in-
lowing line 7, of the pending bill, come; that is, a tax upon gross in-
reading substantially as follows: come, without permitting the de-
Provided, That in the case of in- duction of an expense which is 80
debtedness wholly secured by col- per cent to 90 per cent of the total,
lateral the subject of sale in the The banking house is competing in
ordinary business of any such cor- this business with ordinary bank*
poration, joint-stock company, or and trust companies which are able
association the total interest secured to finance their investment securi-
and paid within the years on any ties out of their deposits, interest
such indebtedness may be deducted on which, of course, is deductible
as an expense of said business. The under the act. The reason of one
same result could be partially is the reason of the other, and we
reached, so far as banking houses believe the omission has been and
go, in a somewhat different way by is an oversight which should be
a provision substantially as follows: remedied at this time." (Senate

(b), Sub-Section G of the Federal income tax law hereinbefore cited.

"This construction of the proviso quoted is not intended to and does not authorize the deduction as an 'expense of doing business' of any interest paid or indebtedness secured by property, real or personal, which is not the 'subject of sale in the ordinary business of the corporation,' but which is held by it for the purpose of, or as an instrument in carrying on, its ordinary business — such as the rights of way and other property of public utility companies, permanent office buildings and property of like character held or occupied for their own particular use or purpose in the furtherance of the objects of the corporation, but which property is not the subject of sale in their ordinary business, and which is simply occupied or used as an instrument or means of, or essential to, the carrying on of the ordinary business for the transaction of which they are organized. The fact that such property may be subject to sale under extraordinary or peculiar conditions does not qualify, but rather disqualifies it as 'collateral' such as is contemplated by this provision of the act cited. The only corporations, joint-stock companies, or associations which will be allowed under this proviso, as herein interpreted, to deduct as an 'expense of doing business' interest paid on indebtedness wholly secured by mortgage on real estate, or other physical or tangible property, are those corporations, joint-stock companies, or associations which are organized and operated for the exclusive purpose of buying, selling, and dealing in the particular kind of property upon which the mortgage is given, and the particular property pledged for the debt upon which the interest is paid must be the 'subject of sale in the ordinary business of the corporation.'

"Any corporation whose indebtedness is secured by a trust mortgage, or by any form of indenture which covers and includes in the lien any property which is not the subject of sale in the ordinary business of such corporation, will be and is excluded from the benefit of this proviso, as hereinbefore construed, and its interest deduction will be limited to the amount authorized in subdivision 'third' above referred to — that is, the interest actually paid within the year, at the contract rate,

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on an amount of bonded or other indebtedness at no time within the year in excess of a sum ascertained by adding to the paid-up capital stock outstanding at the close of the year one-half of the total amount of the interest-bearing indebtedness also then outstanding.

"Corporations which, under this ruling, are entitled to deduct as 'an expense of doing business' the total amount of interest paid within the year on 'indebtedness wholly secured by collateral the subject of sale in the ordinary business of such cor-

porations,' are required to state separately in their returns the amount of indebtedness upon which such interest is paid, segregating it from the indebtedness not so secured, and upon which the interest paid is taken credit for or deducted under item 6 (a) of the return form. The interest-bearing indebtedness stated under item 2 of the return form as one of the bases for determining the amount of interest which may be allowably deducted under item 6 (a) must not include any 'indebtedness wholly secured by collateral the subject of sale in the ordinary business of the corporation.' Failure to segregate the two forms of indebtedness will render the interest deduction under item 6 (a) subject to suspension and disallowance." ^

Under the Corporation Tax Act, Attorney General Wickersham expressed the opinion that all interest upon a mortgage, not assumed by the company, but encumbering land that was bought, might be deducted; but that when the company had assumed the mortgage, only so much of the interest thereupon might be deducted as did not exceed the interest upon its paid-up stock. ^^ Under the same statute it has been held that where the ordinary business of a corporation is the purchase, sale, lease and management of land, interest upon bonds secured by a mortgage upon its land are deductible as ordinary and necessary expenses in the maintenance and operation of its business and as charges required to be paid as a "condition of the continued use or possession" of its property." It has been held

9 Letter to collectors, ^Tune 9, 10 2S Ops. Atty. Gen. 198.

1914. See letter by Commissioner H Anderson v. Forty-Second Osborn to Edward F. Clark, May Broadway Co. (C. C. A. 2d Ct.) 213' 21, 1914, Corp. Trust Co. Records, Fed. 777, affirming Forty-secondC p. 263. Broadioay Co. v. Anderson, 209 Fed.

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that a deduction cannot be allowed for interest paid from which the company failed to deduct the tax at the time of payment as required by the statute. ^^

A subsequent subdivision of the same subsection of the Act of 1913 when regulating returns provides: that they shall include "in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within

and without the United States." '' This language is included in an instruction attached to several forms of returns.^* Mr. Walker thus comments upon the same: "That portion of that instruction which follows that semi-colon, and continues to the period which follows the words 'United States' eight lines below, is a copy of a fragment of subdivision c, subsection G, of the statute. That fragment refers only to income tax returns, to be made by foreign corporations, and refers only to one point in such a return. These are all the facts that are known about that fragment, for its significance on the subject to which it refers is unknown, and past finding out. Probably its ambiguous language arose from some error of some typewriter girl, made when trying to copy some other paper, and whose work was never reviewed by any statesman, but was simply inserted in the statute as it came from her, without being considered by any other intellect." ^^

§ 67. Deductions for taxes paid during the year. An individual is entitled to deduct "all national, state, county,

991. Certiorari granted by S. C. 13 statute II, Subsection G (c).

U. S. Oct. 26, 1914, 235 U. S. — , 59 1*3 Forms 1030, 1031, 1032, 1033,

L. ed. — . 35 Sup. Ct. Rep. — . 1034, 1035, Instr. 15.

12 City of London Contract Co. v. 16 The Unconstitutional Character Styles, 4 Times L. R. 51 (1887), Ct. and the Illegal Administration of App. affirming s. t. 3 Times L. R. the Income Tax Law, demonstrated 512 (1887). by Albert H. Walker, 83, 84.

§ 68] LOSSES DEDUCTIBLE. 247

school and municipal taxes paid within the year, not including those assessed against local benefits." ^ A corporation, joint-stock company, association or insurance company, may deduct: "AH sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country." 2

In the case of foreign insurance companies, the statute reads : "All sums paid by it within the year for taxes imposed under the authority of the United States, or of any state or territory thereof or the District of Columbia." ^

A bank, trust company or other corporation is not entitled to deduct taxes assessed against its stockholders which it has paid in pursuance of a State statute.* The stockholders, consequently, have the right to deduct such taxes when making their returns. "Import duties or taxes are not deductible under the item of taxes paid during the year, but should be included

in arriving at the cost of goods under item No. 4 (expenses).*

"Taxes paid by a corporation pursuant to a contract guaranteeing that the interest payable on its bonds or other indebtedness shall be free from taxation are not deductible." ®

"Reserves for taxes cannot be allowed, as the law specifically provides that only such sums as are paid within the year for taxes shall be deducted." ''

§ 68. Losses deductible by individuals from income.

The statute provides that, in case of individuals, there is to be a deduction of "fourth, losses actually sustained during the year, incurred in trade' or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year ; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case

§ 67. 1 Act of Oct. 3, 1913, II, B. 210 Fed. 933, Bingham, C. J. ;

8/6jd. II, G (b). Northern Trust Co. v. McOoiioh (B.

3/6W. D. Pa.) 215 Fed. 991, Dickinson, J.

4Tr. Reg. 152; T. D. 1763. So 6 Tr. Reg. 155.

held under Corporation Tax Law. 6Tr. Reg. 153.

Eliot Nat. Bank v. Gill, (D. Mass.) ^Tr. Reg. 156.

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of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided , That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate." * The language might justify the construction that losses of capital may be deducted, but the draughtsman of the bill expressed in Congress the contrary opinion.^

"Loss due to voluntary removal of buildings, etc., incidental to improvements is either a proper charge to the cost of new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation of the new building. Any loss claimed because of the voluntary removal of a building is presumed to have been covered by previous depreciation charges; otherwise the amount of such loss

will constitute a part of the cost of the new building." ^ It will be observed that the act does not provide for a deduction of losses, not incurred in trade, sustained by a railroad wreck,* or by personal injuries. The rule in Great Britain is, that to authorize a deduction the loss must be connected with a trade, so as to be incidental thereto, or arise out of the same, and that they cannot be if they are mainly incidental to some other vocation or fall on the trader in some other character.' "The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers

§ 68. 1 Act of October 3, 1913, or losses incurred entirety apart

Subsection B. from business transactions from

2 In the House of Representatives which income is derived. A similar

April 26th, 1913, Mr. Cordell Hull rule governs deductions for ex-

aid: "As to losses, these provisions penses."

primarily contemplate allowance for ^ Tr. Reg. 127.

losses growing out of the trade or * See Walker's First Pamphlet,

business from which the taxable in- ^ Strong & Co. Limited v. Woodi-

come is derived, and generally field [1906] A. C. 448, 75 L. J. K. B.

termed trade losses, as distinguished N. S. 864, 95 L. T. N. S. 241, 22

from losses of capital or principal Times L. R. 754, 5 Tax. Cas. 215.

§ 68] LOSSES DEDUCTIBLE. 249

for accidents in traveling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted." ®

Under the former statute, it was ruled that losses could not be deducted which were not incurred in trade, although suffered by an individual taxpayer, such as loss by robbery,' or loss through the default of a principal, to whom the taxpayer had been a surety.' But inasmuch as the payment by a surety makes the principal his debtor, it was ruled that such a debt might be deducted if "ascertained to be worthless." ® It was also ruled that a debt might be deducted when it became worthless, although it had existed and been payable during a previous year, when no deduction on account thereof was made.'"

Under the present statute it has been ruled, that the phrase "in trade" is synonymous with "business" *' and that losses resulting from the sale of real estate by an individual cannot

be deducted unless real estate operations are a part of a business in which he is engaged.''^ The doing of a single act incidentally or of necessity not pertaining to the particular business of the person doing the same will not be considered engaging in or carrying on the business. '^ It has been ruled that losses due to fluctuations during a taxable year in the value of capital assets, although evidenced by book entries, do not constitute such losses "actually sustained" as may be deducted from gross income. "Losses are not actually sustained until, as a result of a completed, a closed transaction, such losses have been definitely ascertained and the amount they represent has irredeemably disappeared from the assets of the individual or corporation." '^

The instructions of the Treasury Department, endorsed upon

6 Hid. p. 452, per Lord Chancellor H See the definition supra, Sec. 60. Loreburn. « T. D. 1989.

7 See 5 Int. Ev. Kec. 123. !''■ Ibid.

8 5 Int. Rev. Rec. 123. 13 T. D. 2008c; T. D. 2005; Letter

9 5 Int. Rev. Rec. 188. by Acting Commissioner Williams to

10 Regulation III, under Act of collectors, Aug. 14, 1914. 1894.

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the forms for returns by individuals, provide: "Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall subsequently prove to be worthless, they may be deducted under the head of losses in the return for the year in which such debts were charged off as worthless." "

Mr. Walker disputes this position as follows : "This would be an absurd provision to put into the statute, for legal proceedings to recover a debt could not be 'proved fruitless' without the expenditure of more money than the creditor could afford, and without the passage of months or even years during the litigation. And nothing but litigation would make it 'clearly evident' that a debtor is insolvent, and that proceedings to collect the debt would avail nothing. Fortunately, this idea of Mr. Speer has no foundation in the statute, for the statute clearly authorizes debts due to the taxpayer, to be deducted from his gross income, in ascertaining his net income, whenever such a debt is ascertained, to the satisfaction of the taxpayer, to be

worthless, and is thereupon 'charged off' by him from his account books." *^

The regulations provide concerning corporations, joint-stock companies or associations, including limited partnerships and insurance companies: "Bad debts, if so charged off the company's books, during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income." ^*

It was held in a prosecution for perjury that the taxpayer has a discretion in estimating the value of debts which are due him, which he may exercise within the limits of good faith, and that he will not be criminally responsible for an untrue return

1* Form 1040, Instr. 14. " Tr. Eeg. 125.

IB Walker's First Pamphlet, p. 66.

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thus made." It was also intimated that a taxpayer will not be allowed to leave his debts uncollected in order to evade the tax.*' The losses and gains of a firm, of which a taxpayer is a member, are considered as incidental to the business.** Under a former statute it was ruled : that losses incurred in the prosecution of one branch of a business could not be deducted from the gains in another, since an absolute loss incurred in the prosecution of a single business was a loss of capital.^" Under the language of the present statute, this ruling might not be followed. Under a former statute it was further ruled: that losses in speculation incident to the business, such as speculation by a broker in stocks, by a dry-goods merchant in cotton, by a hardware man in iron, might be set off against the gain in that part of his business which was conducted without speculation ; ^* but that loss in speculation could not be deducted from gains in merchandise of an entirely different character from the subject of the speculation, nor from salaries ; ^^ but that losses and gains of speculations of a different character might be deducted from each other ; ^* that losses in one branch of merchandise might be deducted from gains in any other branch ; ^* and that where stocks were bought as a permanent investment and sold for a change of investment, a loss in such sale might be deducted from the dividends thereupon, but that where the purchase and sale were made in speculation, such loss could not be so deducted.^* Where brewers as an adjunct of their brewing trade acted as bankers and money lenders by making loans to customers on the security of public houses, it was held that they might deduct from the profits of brewing losses on such loans. ^^ When shippers, who, by their articles, could not own more than one ship at a time, lost a boat at sea, and with the insurance money bought another, with which they

it United States v. Frost, 9 Int. 28 Ruling, 1 Int. Eev. Rec. 155.

Rev. Rec. 41, Fed. Cas. No. 15,172 ; 23 i int. Rev. Rec. 155. See 3 Int.

United States v. Mayer, Deady, 127, Eev. Rec. 109.

Fed. Caa. No. 15,753. 24 Ruling, 1 Int. Eev. Rec. 155.

18 United States v. Frost, 9 Int. 26 Ruling, 1 Int. Eev. Rec. 196.
Eev. Eec. 41, Fed. Cas. No. 15,172. ^^ Reid's Brewery Go. v. Male

19 Ruling, 4 Int. Eev. Rec. 46. [1891] 2 Q. B. 1, 60 L. J. Q. B. N. S.

20 Ruling, 1 Int. Rev. Rec. 154. 340, 64 L. T. N. S. 294, 39 Week.
2176i(J. Rep. 459.

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traded during the balance of the year, the losses and gains on both ships were set off against each other.^^' In Scotland, it was held that the losses of a farmer could not be deducted from the profits of his business as a seed-merchant.^' These cases were decided under the British statutes, which contain different lan-gTiage upon this subject from that in the Act of October 3, 1913. Consequently, they may not be followed here.

"If the new Treasury ruling on the income tax means that citizens will not be allowed to deduct from their assessed totals actual losses accruing on bona fide sales of securities or real estate, it is outrageous ; no court in the world would uphold it, If it means that holders of stock will not be allowed to deduct theoretical or contingent losses, losses which might or would result from a sale that was not made, the ruling is fair enough, provided it be made sufiiciently broad to cover theoretic or con-tingent gains some time in the future, gains which might or would result from a sale that is not made.

"The proposal to tax a citizen upon his losses on the pretence that a sale of property is not trading clearly belongs to the realm of comic opera. The notion that a man may end a business year tens of thousands of dollars poorer than he began it, that, in fact, he may become a bankrupt, and still be expected to pay income tax on net income - for net income is contemplated in every sentence of the law - is the sort of idea that the late W. S. Gilbert would have reveled in. It is only one step further to inflicting a penalty on every one who fails to earn an income high enough to bear the tax.

"As for the plea that the Government needs the money, it simply has nothing to do with the case. The Government's necessities are no excuse for contorting a statute to make it cover robbery. The war tax measure is being passed precisely to meet this condition of the Government's finances. If it does not cover all deficiency reasonably to be expected there is still time to amend it. However oppressive it may become, the burden is preierable to placing tJie entire community at tne mercy of a

27 Merchiston Steamship Co. v. 28 Brovm ■ v. Watt, 23 Scot. L. E.

Turner [39011 2 K. B. 923, 102 L. 403, 50 J. P. 583, 2 Tax. Cas. 143.
T. N. S. 363— Brat, J.

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taxgatherer's whim with the alternative of prolonged and expensive litigation.

This ruling verifies one more of the many fears which have been expressed all along that the income tax was certain to bring with it endless injustices and vexations which would make it one of the most galling and unpopular assaults upon personal lights ever endured by Americans." ^^

§ 69. Losses deductible by corporations, joint-stock companies and associations. In the case of corporations, joint-stock companies or associations, or insurance companies, there must be a deduction of "all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made." ^ All losses not compensated by insurance or otherwise must consequently be deducted, whether they were incurred in trade or not.* Thus, a loss by embezzlement may be deducted,^ provided that an allowance is made by a credit of any net amount recovered from the defaulter that has absconded.* The act makes no provision for debts actually ascertained to be worthless and charged off within the year. Under a former statute, which made no such exception, it was ruled that a debt might be deducted as soon as it became worthless, although it had existed and been payable during a previous year, when no deduction on account thereof was made.®

The Privy Council held when construing the New Brunswick Act imposing a tax upon income that "in the natural and

29 Editorial N. Y. Sun, Oct. 18, of the property owned or business 1914. carried on shall make full and com-

§ 69. 1 Act of October 3, 1913, plete return of said income and Subsection G (b). shall pay the tax as provided here-

8 United States v. Central Nation- in." T. D. 2013.

al Bank, 10 Fed. 612; s. c, 15 Fed. * Solicitor General Phillips, 13 223. Ops. Atty. Gen. 643.

SiSid. "The responsible heads, 5 Regulation III, under Act of

agents or representatives of said 1894.
nonresident aliens who are in charge

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ordinary meaning of language, the income of a bank or trade-
for any given year would be understood to be the gain, if any^
resulting from the balance of the profits and losses of the busi-
ness in that year ; " and that the bad debts of the year must be
deducted and could not be excluded from consideration as "a
loss pro tanto of capital." ®

"The deduction for losses must be losses actually sustained
during the year and not compensated by insurance or otherwise.
It must be based upon the difference between the cost value and
salvage value of property or assets, including in the latter value
such amount, if any, as has, in the current or previous years,
been set aside and deducted from gross income by way of de-
preciation, as elsewhere defined, and has not been paid out in
making good such depreciation." ''

"Bad debts, if so charged off the company's books, during the
year, are proper deductions. But such debts, if subsequently
collected, must be treated as income." *

"Reserves to take care of anticipated or probable losses are
not a proper deduction from gross income." ®

"Loss due to voluntary removal of buildings, etc., incident
to improvements is either a proper charge to the cost of new
additions or to depreciation already provided, as the facts may
indicate, but in no case is it a proper deduction in determining
net income, except as it may be reflected in the reasonable
amount allowable as a deduction for depreciation of the new
building. Any loss claimed because of the voluntary removal
of a building is presumed to have been covered by previous de-
preciation charges ; otherwise the amount of such loss will con-
stitute a part of the cost of the new building." ^''

It has been ruled that losses due to fluctuations during a
taxable year in the value of capital assets, although evidenced
by book entries, do not constitute such losses "actually sus-
tained" as may be deducted from gross income. "Losses are
not actually sustained until, as a result of a completed, a closed

6 Lawless v. Sullivan, L. R. 6 App. 8 Tr. Eeg. 125.

Cas. 373, 378, 379, 382, per Sir MoN- 9 Tr. Eeg. 126.

TAQUB E. Smith, A. D. 1881. 1»Tr. Eeg. 127.

'Tr. Reg. 124.

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transaction, such losses have been definitely ascertained and the amount they represent has irredeemably disappeared from the assets of the individual or corporation." "

A book charge because of the sale of an issue of bonds at less than par cannot be deducted.'^

"Losses may be sustained by individuals or corporations on personal or real property. Only those losses are deductible which are sustained during the tax year 'in trade' - that is, the business which engages the time, attention and labor of any one for the purpose of livelihood, profit or improvement. Loss to be deductible, must be an absolute loss, not a speculative or fluctuating valuation of continued investment, but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be incurred in trade, and be determined and ascertained upon an actual, a completed, a closed transaction.

"Losses sustained by individuals or corporations from the sale of or dealings in personal or real property growing out of ownership or use of or interest in such property, will not be deductible at all unless they are an incident of, connected with and grow out of the business of the individual or corporation sustaining the loss, and are ascertained, determined, and fixed as absolute in the above sense, within the taxable year in which the deduction is sought to be made. When loss under this heading is ascertained to be deductible, the entire amount of the loss will be deductible except where the property, in connection with which the loss occurred, was acquired prior to March 1, 1913, in the case of individuals, and prior to Jan. 1, 1909, in the case of corporations, and then, and in such event, the loss ascertained will be prorated over the whole time the property was held, and that part of the whole loss apportioned to the taxable period will be taken into account in annual returns if income, in prorating, fractional parts of years will not be considered.

11 T. D. 2008c; T. D. 2005; Letter ^^ Baldmn Locomotive Works v. by Acting Commissioner Williams to McGoach, 215 Fed. 967, under Act of collectors, Aug. 14, 1914. Aug. 5, 1909.

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"Loss is the difference between selling price and cost, where the selling price is less than cost." '*

§ 70. Deductions by domestic insurance companies.

In determining the net income of a domestic insurance company, there should be deducted: "(First) All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals

or other payments required to be made as a condition to the continued use or possession of property.' In this are included the expenditures for uniforms of attendants and office furniture and equipment, including rugs, awnings, small hardware, door-mats, window-shades, lamps, meters, electric wires and fixtures, and other articles of a similar character, which are no greater than the previous yearly average of similar expenses.^ (Second) All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any." ^ (Third) "The net addition, if any, required by law to be made within the year to reserve funds." In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds are treated as payments required by law to reserve funds.* Under the Corporation Tax Law of 1909, it was held that a deduction might be made of additions to the reserve fund to secure payment upon supplemental policy contracts. These consisted of policies under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of years, instead of in a lump sum.* (Fourth) "Sums other than dividends paid within the year on policy and annuity contracts." ® Under the Corporation Tax Act of 1909, it was

13 T. D. July 17, 1914. 6 Subsection G (b). This repeats

§ 70. 1 Statute, Subsection G (b). the language in the Corporation Tax

2 Mutual Benefit Life Insurance Act of August 5th, 1909, but omits Co. V. Herold, 198 Fed. 199, 216. the comma which is there inserted

3 Subsection G (b). See § 64, after the word "dividends." Mr. supra. Kossuth Kent Kennan comments

4 Subsection G (b). upon this language as follows: "But

5 Mutual Benefit Life Insurance the law does not speak of 'dividends Co. V. Herold, 198 Fed. 199, 212. paid.' It speaks of 'sums,' 'paid

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held: that all life insurance companies might deduct or omit from their return any part of the actual premium which was paid hack or credited to an individual stockholder or treated as an abatement of his premium within the year, although the same was termed "a dividend ; " but that there could be no deduction of dividends declared in the case of a full paid participating policy, wherein the policyholder had no further premium payments to make.'

The dividends paid by mutual life insurance, companies to their policyholders have been analyzed into four parts : salvage

on loading, salvage on mortality, surplus interest on reserve and interest on loading of both classes of salvage. Of these, the first two parts, namely, salvage on loading and salvage on mortality, are returns to the policyholder out of his premium and

within the year on policy and annuity contracts' and dividends are expressly excepted from these sums. The phrase would perhaps have been clearer had it read: 'the sums paid within the year, other than dividends, on policy and annuity contracts.' We are aware of the general rule in legal construction ■ that the punctuation of an act or its title is not controlling for the purpose of ascertaining its real meaning. But it is equally well established that courts may give effect to punctuation in determining the true meaning of doubtful passages. A strong reason for giving the comma its full significance in this case is that only in this way can the sentence be made coherent and intelligible. If all the words following 'dividends' are construed to relate to dividends then the word 'sums' is left hanging in the air, unexplained and unrelated to anything which follows or precedes. If however the words, 'other than dividends' is treated as a parenthetical clause relating wholly to 'sums paid within the year on policy and annuity contracts' we have a complete and intelligible statement, and one which may be fairly supposed to express the true intent of Congress that, in computing net income, dividends, as such, should not Foster Income Tax. - 17.

be deducted." The Federal Income Tax in its Relation to Life Insurance Companies, Milwaukee, 1913, pp. 19, 20.

1 Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199, s. c. as Herold V. Mutual Benefit Life Ins. Co. 120 C. C. A. 256, 201 Fed. 918. The Circuit Court of Appeals reserved its judgment upon the latter point. Mr;

Kossuth Kent Kennan criticized so much of the reasoning of the District Court as states that the purpose of the Act "was to subject to taxation cash dividends." He says that the object of the Act was not the taxation of cash dividends, but the taxation of net earnings; and further that the question, whether or not dividends are deductible from gross income, hinges more upon the elements that make up the dividend than upon the form of payment. The Federal Income Tax in its Relation to Life Insurance Companies, Milwaukee, 1913, p. 12. See also *JV. Y. Life Insurance Co. v. Styles* (1889) L. R. 14 App. Cas. 381, 59 L. J. Q. B. N. S. 291, 61 L. T. N. S. 201, 2 Tax Cas. 460; *Contra*, *Last v. London Assurance Corporation* (1885) L. R. 10 App. Cas. 438, 55 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax Cas. 100.

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are deductible from the taxable income. The last two, however, which consist of surplus interest on the reserve and interest upon loading salvage, are in the nature of profits and seem, consequently, to be income. It has consequently been suggested that they must be taxable as income, either in the hands of the corporation or of the policyholder, and that the better method is to collect the tax on the aggregate sum in the hands of the Insurance Company.*

By the Treasury Regulations,

"Art. 100. Life insurance companies are authorized to omit from gross income such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to the policyholder or treated as an abatement of his premium. In so far as 'deferred dividends' payable at a stated period represent 'a portion of any actual premium received,' such deferred dividends may be included in the amounts to be omitted from gross income for the year in which they were actually paid back, credited to the policyholder, or applied as an abatement of premium. In the case of dividends credited or apportioned annually to the policyholder, only the aggregate amount so actually credited or apportioned during the premium-paying period, and not any accretions thereto, can be excluded from gross income. In the case of whole-life or five-year distribution policies, deferred dividends may be excluded from gross income to the extent that they are

paid back, or credited to the insured, or used as an abatement of his annual premiums."

Mutual fire insurance companies may deduct or omit from their return any part of the premium deposits returned to policyholders.*

By the Treasury Regulations,

"Art. 98. Mutual fire insurance companies, which require their members to make premium deposits to provide for losses and expenses, shall not return as gross income any portion of

«The Federal Income Tax in its 198 Fed. 199, 212, affirmed as former Relation to Life Insurance Corp. v. Mutual Benefit Life Ins. Co. 120 Fed. 120, 201 Fed. 918, which is criticized by Mr. Kennan. Mutual Benefit Life Ins. Co. v. Berold, ^ Subsection G (b).

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the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves."

Mutual marine insurance companies may deduct all amounts repaid to policyholders on account of premiums previously paid by such, with payments for interest upon the same.

"Art. 99. Mutual marine insurance companies may include in their deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, such amounts and interest having been included in gross income."

Insurance Companies are by the statute further authorized to deduct: (Fifth) The amount of interest accrued and paid within the year upon so much of its indebtedness, whether bonded or otherwise, as does not exceed one-half of the sum of its interest-bearing debts and its paid-up capital stock; or if, as a mutual insurance company, it has no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the year's close; but where the indebtedness is wholly secured by collateral, the subject of sale in ordinary business of the company, which may possibly apply to loans upon life insurance policies, the total interest secured and paid upon such indebtedness may be thus deducted." (Sixth) The amount actually paid within the year for taxes imposed under the

authorities of the United States, or of any State or Territory thereof, or imposed by the Government of any foreign county." Whether the tax as imposed under the authority of the District of Columbia can be deducted by insurance companies not organized in foreign countries is not specifically stated.

The Treasury Regulations provide :

"Art. 97. Gross income of insurance companies consists of the total revenue derived from the operation of the business, in-

M Tr. Reg. 113. »» See supra, § 67,

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cluding income, gains, or profits from all other sources, as shown by the entries on the books of account within the calendar or fiscal year for which the return is made, except as modified by the express exemptions of the articles which apply to mutual fire, mutual marine and life insurance companies."

"Art. 101. Gross income of insurance companies, as defined above, will include net premium income as reported to the State insurance departments, except the foregoing items specifically exempted in the act, and, in the case of life insurance companies, surrender values applied in any manner, consideration for supplementary contracts involving and not involving life contingencies, and all other income, gains, or profit as shown by the books of account.

"Art. 102. Applied surrender values and consideration for supplementary contracts not involving life contingencies included in income will, of course, be deducted as payments under policy contracts, but for convenience in verifying the returns, these items should appear in the return in both gross income and deductions.

"Art. 103. All insurance companies should include and attach to their returns a supplementary statement showing, for life companies, the aggregate of items 'of such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder within such year ;' in the case of mutual fire insurance companies a statement showing 'any portion of the premium deposits returned to their policyholders;' and in the case of mutual marine companies 'amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof,' which are, or may be, omitted from gross income."

The statute authorizes a deduction, by "insurance companies, the net addition, if any, required by law to be made within the year to reserve funds, and the sums other than divi-

dends paid within the year on policy and annuity contracts," ex-

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cept as provided in the cases of mutual fire, mutual marine, and life insurance companies." ^*

"Art. 147. (a) Under item 5 (a) of the return form, the insurance company may take credit for all losses actually sustained during the year and not compensated by insurance or otherwise, including losses resulting from the sale or maturity of securities or other assets, as well as decreases by adjustment of book values of securities, in so far as such decreases represent actual declines in values which have taken place during the year for which the return is made ; also losses from agency balances, or other accounts, charged off as worthless losses by defalcation ; premium notes voided by lapse, when such notes shall have been included in gross income. This item will not, however, include payments on policy contracts.

(g) In this item may be deducted actual losses sustained within the year by reason of the depreciation of property, which shall have been so entered on the books of the company as to constitute a liability against its assets. An arbitrary depreciation deduction claimed in the return, but not evidenced by book entry, cannot be allowed.

1 (c) In this item credit will be taken for all death, disability, or other policy claims, including fire, accident, and liability losses, matured endowments, annuities, payments on installment policies, surrender values, and all claims actually paid under the terms of policy contracts. Salvage need not be included in gross income if deducted in ascertaining the net amount paid for losses under policy contracts. Reserves covering liabilities for losses incurred, reported, resisted, adjusted or unadjusted but not paid, cannot be deducted from gross income under this or any other item of the return.

(d) The reserve funds of insurance companies to be considered in computing the deductible net addition to reserve funds are held to include only the reinsurance reserve and the reserve for supplementary contracts required by law in the case of life insurance companies, the unearned premium reserves required by law in the case of fire, marine, accident, liability, and other insurance companies, and only such other reserves as are specifically required by the statutes of a State within

12 II. G. (c).

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which the company making the return is doing business. The reserves used in computing the net addition must not include

the reserve on any policies the premiums on which have not been accounted for in gross income. For the purpose of this deduction, the net addition is the excess of the reserve at the end of the year over that at the beginning of the year and may be based upon the highest authorized reserve required by any State in which the company making the return does business.

In the case of assessment insurance companies, the actual deposits of sums with the State or Territorial officers pursuant to law, as additions to guaranty or reserve funds, shall be treated as payments required by law to reserve funds.

Mutual marine insurance companies will deduct under item 5 (e) amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof."

§ 71. Deductions by alien insurance companies. The taxable net income of an insurance company organized, authorized or existing under the laws of any foreign country, is ascertained by making from the gross amount of its income accrued within the year from business transacted and capital invested within the United States the following deductions: "(First) All the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property." ^ In this are included the expenditures for uniforms of attendants and office furniture and equipment, including rugs, awnings, small hardware, door-mats, window-shades, lamps, meters, electric wires and fixtures, and other articles of a similar character, which are no greater than the previous yearly average of similar expenses.^ "(Second) All losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a

§ 71. 1 Statute, Subsection 6 (b.) as Herold v. Mutual Benefit Life Ins. Co. v. Co. 120 C. C. A. 256, 201 Fed. 918. Berold, 198 Fed. 199, 216, affirmed

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reasonable allowance for depreciation by use, wear and tear of property if any." ' (Third) "The net addition, if any, required by law to be made within the year to reserve funds." * In the case of a foreign assessment insurance company, the actual deposit of sums with State or Territorial officers, pursuant to law, as addition to guarantee or reserve funds, is considered as a payment required by law to a reserve fund.* Under the Corporation Tax Law of 1909, it was held that a deduction might be made of additions to the reserve fund to secure payment upon supplemental policy contracts, consisting of policies, under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of

years, instead of in a lump sum.' (Fourth) "Sums other than dividends paid within the year on policy and annuity contracts." ' All life insurance companies may deduct or omit from their return any part of the actual premium which is paid back or credited to an individual policyholder or treated as an abatement of his premium within the year although the same is termed "a dividend." ' Mutual fire insurance companies may deduct or omit from their return any part of the premium deposits returned to policyholders.' Mutual marine insurance companies may deduct all amounts repaid to policyholders on account of premiums previously paid by such, with payments for interest upon the same." (Fifth) "The amount of interest accrued and paid within the year on its indebtedness, to an amount of indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close

3 Subsection G (b). Co. 120 C. C. A. 256, 201 Fed. 918;

* *Ibid.* N. Y. Life Insurance Co. v. Styles

ibid. . (1889) L. E. 14 App. Cas. 381, 59

« *Mutual Benefit Life Ins. Co. v. L. J. Q. B. N. S.* 291, 61 L. T. N. S.

Herold, 198 Fed. 199, 212, affirmed 201, 2 Tax Cas. 460. *Contra*, *Last*

as *Herold v. Mutual Benefit Life Ins. v. London Assurance Corporation*

Co. 120 C. C. A. 256, 201 Fed. 918. (1885) L. R. 10 App. Cas. 438, 55

See *Tr. Reg.* 102; *supra*, § 70. L. J. Q. B. N. S. 92, 53 L. T. N. S.

'Subsection G (b). See *Tr. Reg.* 634, 34 *Week. Rep.* 233, 2 Tax Cas.

100 and *supra*, § 70. 100.

ibid. *Mutual Benefit Life Ins.* 9 Subsection G (b).

Co. V. *Herold*, 198 Fed. 199, affirmed 10 /*ibid.* See *Tr. Reg.* 98; *supra*,

as *Herold v. Mutual Benefit Life Ins.* § 70.

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of the year, which the gross amount of its income for the year* from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States." ^' (Sixth) The amount actually paid within the year for taxes imposed under the authority of the United States, or by any State or Territory thereof, or the District of Columbia. ^^ "Gross income of insurance companies consists of the total revenue derived from the operation of the business, including income, gains,

or profits from all other sources, as shown by the entries on the books of account within the calendar or fiscal year for which the return is made, except as modified by the express exemptions of the articles which apply to mutual fire, mutual marine and life insurance companies." ' ' For other applicable regulations upon subject, see those quoted in preceding section upon "Deductions by Domestic Insurance Company." ^*

§ 72. General and uniform deductions. There shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her, but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife. Provided, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together.^ It has been ruled that this does not apply to income of nonalien residents.*

Under the earlier statutes it was ruled : that where the members of a family disagreed upon the apportionment of the amount of an exemption, the case might be referred to the Internal Revenue Office; ' and that any joint exemption or deductions should be shared in proportion to the respective incomes.*

11 /Sid. See Tr. Reg. 99; supra, § 72. 1 Act of October 3, 1913, § 70. Subsection C.

12 Ibid. See supra, § 70. , « Tr. Reg. 8, T. D. 2013.

13 Tr. Reg. 97. ' 1 Int. Rev. Rec. 149.

14 Supra, § 70. * 1 Int. Rev. Rec- 188.

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The Treasury Regulations consider this subsection as authorizing a husband and wife, who live apart, each to deduct \$3,000; but when they live together, to permit a deduction of \$4,000 only from the aggregate income of both.

"Art. 9. Under paragraph C, every single person and every married person not living with husband or wife in the sense below defined, who has a net income exceeding \$3,000 per annum, is liable to pay the normal tax under this law, but in making return for such tax such person may claim an exemption of \$3,000 from his or her total net income.

"Art. 10. Husband and wife living together are entitled to an exemption of \$4,000 only from the aggregate net income of both, which may be deducted in making the return of such income for taxation. However, when the husband and wife are separated and living permanently apart from each other each

shall be entitled to an exemption of \$3,000.

"If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each, and the full name and address of both, must be shown in such return.

"The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

"If a wife has a separate estate managed by herself as her own separate property and receives an income of \$3,000 or over, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than \$4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of \$4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed \$4,000.

"If either husband or wife separately has an income equal to or in excess of \$3,000, a return of annual net income is required under the law, and such return must include the income

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of both, and in such case the return must be made even though the combined income of both be less than \$4,000.

"If the aggregate net income of both exceeds \$4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately may have an income of \$3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

"The single or married status of the person claiming the specific exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year,' and this is the construction given by draftsman of the act.'

§ 73. Deductions by guardians. Guardians pay no tax

upon the income of their wards, unless the latter's net annual

«Tr. Eeg. 9, 10.

* In his address before the N. Y. Bar Ass'n Congressman Cordell Hull said:

"Par. C, relating to exemptions, has given rise to much discussion and difference of construction. This paragraph as finally written was agreed upon in the Conference Committee of the House and Senate after protracted discussion and earnest controversy. As not infrequently occurs under such circumstances, the language of the paragraph is not clear, nor is it quite in harmony with the assessment provisions of the law. It is obvious that with Par. C eliminated from the law the net income of every man, woman and child from \$1.00 and over would be subject to the normal tax of 1%. The laws of all governments, after providing the method of computing the net income of a taxable person, also contain a provision allowing an exemption of a fixed amount of the same. Our former income tax laws have allowed different amounts as exemptions. Most all of the fifty-two income tax laws in operation throughout the world prescribe the family as the basis of income and unit of taxation, and provide a statutory exemption that may be deducted from the aggregate net income of the family, consisting of husband and wife, or husband and wife and minor children. Our former income tax laws contained a

like provision. In but rare instances has this rule which long experience has approved been departed from by any government. For this tax law to go inside the family and allow each individual member — husband, wife, and each minor child — an exemption of \$3,000, throws wide open the door to evasion and fraud.

Any member of the family receiving income from investments might during the period of assessment easily make such distribution among members of the family as would satisfy his or her conscience, and enable each to secure exemption, and thereby evade taxes. The exemption is intended for the member or members of the family furnishing the income — whether husband, wife, or child, or all jointly and ratably.

"Par. C of the present law allows each taxable person an exemption of \$3,000. In case of a husband and wife living together, only one of whom has taxable income, he or she making return of same is allowed \$1,000 additional exemption. Furthermore, the proviso at the end of Par. C imposes a restriction or limitation upon the main provision with respect to the amount of exemption to be allowed a husband and wife living together, in all cases where each has taxable income. But this does not interfere with the right of husband and wife to be taxed as individuals under the additional tax provisions. The language of the pro-

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income is \$3,000 or over.* The ward is entitled to this deduction by his guardian, whether he lives with his parents or not, and if there are several wards it seems that the deduction will be allowed to each, even if they live together.* The guardian must deduct and pay to the Government the tax upon so much of the income of his ward as exceeds \$3,000 for any taxable year "other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein." *

viso 'tliat only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife wlien living togetlier' can liave but one meaning, and that is that the normal tax fastens itself upon the amount of the aggregate income of such husband and wife in excess of \$4,000. The law is plain in its provisions that every dollar of the net income of both husband and wife when living together is subject to the normal tax except to the extent of the exemption to be had under authority of Par. C. As just stated, the benefit of the exemption can only be had upon condition that their net income shall be aggregated, and only one deduction of \$4,000 is then allowed to be made therefrom. If no return of this income should be made as directed by Par. U, and if no assessment of taxes should be made upon the same as provided by Par. E, an action of debt would lie each year under section 3213, Revised Statutes, in favor of the government against such husband and wife for the amount of the taxes accruing upon that portion of their aggregate net income in excess of \$1,000, with costs of the proceeding. This is true regardless of the question as to whether a lien would attach or penalties accrue. An assessment is not a prerequisite to the collection of taxes legally imposed. "It is seen from the foregoing that one view makes the family the basis of income and the unit of taxation and the other the individual. 'I he new law is a compromise of both views.

"The income tax laws of all countries allow the taxpayer certain exemptions and deductions in computing his net taxable income. To frame a law providing for such deductions as are usually allowable, and which can be administered with ease and convenience at the outset is not free from difficulty, by reason

of the complex business conditions existing in this country. There is naturally much difference of opinion with respect to the amount of exemption that should be allowed a taxpayer. Most foreign laws allow a statutory exemption ranging from \$50 to \$250. England and a few minor states allow a larger exemption.

"A model or scientific income tax law would embrace a graduated tax imposing the lowest rate at a point just above the amount of net income reasonably necessary to support an average family, and likewise imposing the higher rates upon each successive category of income. This view is based upon the experience and the teaching that a family is entitled to subsist before being compelled to pay taxes to the government, otherwise it would have to ask government charity in return."

Report of N. Y. State Bar Ass'n
1914, pp. 128-130.

§ 73. Act of October 3, 1913,
Subsection D.

§ Ruling, 11 Int. Rev. Rec. 153.
See 1 Int. Rev. Rec. 171.

§ Act of Oct. 3, 1913, II. Subsection D.

CHAPTER V.

RETURNS.

§ 74. Persons who must make return. Returns must be made by individuals and by corporations, joint-stock companies and associations. Each of these classes must make return on behalf of themselves and also for others, on whose behalf they collect income in certain cases. Returns must be made by all individuals over lawful age, subject to the tax, and having a net income of \$3,000 for a taxable year, provided that such an amount of their respective incomes was not derived from a source at which the tax has been already paid. Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, must make return of the net income of the beneficiaries of their respective trusts, in each

case, when such net income equals at least \$3,000, provided that no essential part of such minimum is income upon which the tax has been already paid at its source; but a return made by one of two or more of such persons jointly acting in a fiduciary capacity, is sufficient.* All persons, firms, companies, co-partnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, amounting to at least \$3,000, must make a separate and distinct return of such portion of that person's income.* In

§ 74. 1 12 Stat, at L. p. 309, 2 Act of Oct. 3, 1913, U. printed in full, infra, part IV. 3 Ibid.

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this class are apparently included lessees, mortgagees of property, real and personal, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, officers and employees of the United States. The trustees under deeds of trust or similar obligations of corporations, joint-stock companies or associations, and insurance companies, and such corporations, joint-stock companies, associations and insurance companies, when mortgagors or obligors upon bonds or similar obligations, deduct and pay the tax upon all fixed and determinable annual gains, profits and income, derived from interest upon such bonds, mortgages and deeds of trust, although such interest does not amount to \$3,000.* And the Treasury Regulations direct that each shall file with the collector of internal revenue for his, her or its district, a certificate of such deduction, which is in the nature of a return. The disbursers within the United States, or the collectors and vendors of coupons, checks or bills of exchange, for or in payment of dividends upon the stock or interest upon the obligations of foreign corporations, associations and insurance companies, engaged in business in foreign countries, and all dealers in the same who buy them otherwise than from a bank or other dealer in such coupons, are required to deduct and pay the tax thereupon; although such interest, dividends or other compensation does not exceed \$3,000.* The Treasury Regulations provide that: "Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted, and from what source collected."

When an individual wishes to enforce a statutory deduction from the tax upon income paid at its source, that is, by one of

the persons above specified, he must file with the person who is required to withhold and pay the tax for him, a true and correct return of his annual gains, profits, and income from all other sources and also the deductions asked for, and the showing thus made must then become a part of the return made in his

* Subsection E. 6 iMd,

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behalf by the person required to withhold and pay the tax ; or he must make a similar application for deductions to the collector of the district in which return is made or to be made for him ; unless he is a minor, or insane, or absent from the United States, or unable owing to serious illness to make such return and application, in which case such return and application may be made for him or her by the person required to withhold and pay the tax, if the latter swears that he has sufficient knowledge of the affairs and of the property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.' The statute fails to state expressly whether such supplemental return when made by or in behalf of the recipient of the income or whether the application to the collector must be supported by an affidavit as to the truth of the matters therein stated.

It was ruled under the Act of July 14, 1870, which in section 11 required returns from all persons "whose gross income during the preceding year exceeded \$3,000," that persons whose income did not exceed that figure need not make returns, nor even make affidavit that their incomes did not exceed that sum.' This practice would seem to be correct under the present law. There is no provision requiring or compelling any affidavit, except that providing a return, and if no return is made there would seem to be no reason for any affidavit.

The statute prescribes that returns shall be made by all persons of lawful age,' a provision that is repeated from former acts. It was ruled formerly that a minor, if he had no guardian, should make return himself; but that if he refused, an independent assessment should be made, as in other cases, without, however, imposing any penalty.' A subsequent ruling under a former statute was that when a minor had no guardian, the father, if living, was responsible for the return as being the child's natural guardian, and if he had legal control of the minor's income he should return it with his own." If he has such legal control, that would seem to be the present law.

If the taxpayer is unwilling or for any reason unable to make the return himself, it is provided: "That if any person

« Subsection D. » 7 Tut Rev. Rec. 59.

1 13 Int. Rev. Rec. 97. " 1 Iflt. Rev. Rec. 6R,

- Subsection D.

§ 74] PERSONS WHO MUST MAKE KETUEN. 271

liable to paj any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person." **

The Revised Statutes, as amended by this Act, provide:

"When any person, corporation, company or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examinattinn of the collector and on his own view or information, such list or return, according to the form prescribed, of the income * * * liable to tax, owned, or possessed, or under the care or management of such person, or corporation, or company, or association." "

In case of a refusal or neglect to make a return in due time, and in case of a false or fraudulent return, the Commissioner of Internal Revenue "shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law." "

"U. S. Eev. Stat. § 3173. U. S. « 15 V. S. Rev. Stat. § 3176. Comp. Stat, inni, p. 20K5, as amend- 1» Subsection E. ed by subsection 1, b, this Act.

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§ 75. Returns by copartnerships. All firms having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of any person subject to the tax^ must make such return whenever such person's annual income is equal to at least \$3,000.* "Any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who

would be entitled to the same, if distributed." *

The Treasury Regulations provide: "His or her pro rata share of the net profits derived from a partnership business, whether or not divided and paid out shall be included in the personal return of each partner." '

"Partnerships, as such, are not subject to the income tax, and are only required to make return when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business ; and when a return is required it shall give a complete and correct statement of the gross income of the said partnership and also a complete statement of the actual expenses of conducting the business of said partnership, and the net profits and the name and address of each member of said partnership, and their respective interest in the net profit thus reported.*

"The net annual profits of a partnership when divided and paid to the members thereof shall be included by each individual partner receiving same in his annual return of net income, and the tax shall be paid thereon as required by law. When the annual profits of a partnership are not distributed and paid to the members thereof the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as a part of their gross income, the same as if said profits had been distributed and paid to them." *

"Undivided annual net profits of partnerships thus returned

§ 75. 1Act of October 3, 1913, »Tr. Reg. 11.

Subsection D. 4Tr. Reg. 12.

ilbid. 6Tr. Reg. 13.

§ 75] BETUENS BY COPAETNEESHIPS. 273

by the individual members thereof, and tax paid thereon, shall not, when said profits are actually distributed and paid to such members, be again included in their annual return as a part of their gross income." *

The Treasury Department has ruled in accordance with the opinion of the Attorney-General : ' that since partnerships are not taxable as such, the tax cannot be deducted at the source from income due them ; ' and that upon filing a certificate of ownership in forms 1001 or 1003,[®] or, in the case of foreign firms, in revised form 1004," a copartnership can collect the whole amount of any coupon or other obligation due the same.'* The Department has further ruled that the individual members of a firm cannot, when making a return of income or paying the tax, deduct from their respective shares of its income their

proportionate amounts of income received by the firm which belongs to a class that the statute exempts from the taxj '^ but the soundness of this latter ruling is questionable. ''

"Foreign partnerships or firms, all the members of which are both citizens, or subjects, and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks of corporations, joint-stock companies or associations and insurance companies, organized or doing business in the United States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States, a certificate and notice of ownership (Form 1016) setting forth the above facts; and the debtor or withholding agent shall not withhold any part of said income." "

6 Tr. Reg. 14, as amended by T. D. " Tr. Reg. 49.

1957. 1*T. D. 1957, Acting Commission-

7 Opinion of Attorney-General Moore Fletcher to Corporation Trust Co. Reynolds, February 12, 1914. March 27, 1914.

8 T. D. 1957. This repeals Tr. 13 See the opinion of Messrs. Caldwell and last sentence of Tr. well, Masslich & Reed to the Investment Bankers' Ass'n of America

9 Printed in full infra, § 103. June, 1914. I B. A. of A. Bulletin,

10 Tr. Reg. 49. Printed in full II, No. 12. infra, § 103. 1*Tr. Reg. 48.

Foster Income Tax. - 18.

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"Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners residing in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership who is a citizen of the United States, or who is a foreigner residing in the United States or its possessions, shall be given on the back of said certificate, and no part of said income shall be withheld. The said certificate and notice of ownership in either case above provided shall be on Form 1014." "

The certificate should be upon white paper in the following form:

(FORM 1065.)

„ District of I

United States Internal Revenue.

RETURN OF ANNUAL NET INCOME.

(Paragraph D, Section 2, Act of Congress approved October 3, 1913, and Article 12, Regulations No. 33.)

Partnerships.

Return of net income of whose

(Name of partnership.)

principal place of business is located at

(Street and number.)

city or town of , in the State of

for the calendar (fiscal) year ended , 191..

1. Gross Income (see Note A, page 4) \$

2. Deductions:

(o) Total amount of all ordinary and necessary expenses paid within the year for the maintenance and operation of the business and properties of the partnership, exclusive of interest payments (see Note B, page 4) \$.i

(6) Total amount of losses sustained during the year not compensated by insurance or otherwise (see Note 1, page 2) \$ -

"Tr. Reg. 49.

\$ 75]

RETURNED BY PARTNERSHIPS.

(o) Total amount of depreciation for the year (see Note 2, page 2) I

(d) Total amount of interest paid on indebtedness I

(e) Total amount of interest received upon obligations of a State or political subdivisions thereof, and upon the obligations of the United States or its possessions I

(/) Total taxes paid during the year I

Total Deductions

3. Net income on which the individual members are subject to tax on their distributive interest, whether distributed or not \$.

Note. - The above blank spaces for figures should show the amount of each respective item. If there is nothing to return under any item, the word "none" must be written in such blank space.

PAGE 2 OF FORM 1065.

If deductions are claimed on page 1, state here, in detail:

Note 1. If loss, of what the loss consisted, when it was actually sustained, and how it was determined to be a loss; and if bad debts, of what they consisted, when they were created, when and how they were ascertained to be worthless.

Note 2. If depreciation, the character of the property on which depreciation is claimed; if buildings, the character of the buildings, the material of which constructed, when erected, the cost, and the basis on which deduction claimed was made; if property other than buildings, the character of the property, its cost, when purchased, and the basis on which depreciation was claimed.

4. Members of partnership:

Name.

Post-OfEce Address.

Amount of distributive

interest in net income.

Persons who are citizens or residents of the United States employed by your firm, either as members of the partnership or in any capacity whatever, to each of whom a salary or compensation in any form whatever was paid to the amount of \$3,000 or over for services rendered during the calendar year. For the year 1913 the report should show amounts received of \$2,500 or over for services rendered from March 1 to December 31, 1913, inclusive.

Name.

Post-Office Address.

Amount of salary or compensation.

State of , County of , to wit :

, . . . , Member of the firm of . . . ,

a partnership, whose return of annual net income is set forth herein, being duly sworn, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said partnership during the year stated; that the expenses claimed as deductions were actually incurred and paid during the year; that the amount claimed for losses and depreciation are believed to be proper and allowable deductions under the law.

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and that the net income therein set forth is the full amount of the distributive interest on which the individual members are subject to income tax.

For , Partnership.

Sworn and subscribed to before me this . . . ; . . . day of , 191 .

Notarial seal.

(Official capacity.)

Note A. — Gross income shall consist of the total of the gross revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of organizations, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions.

Note B. — Amounts expended in making permanent improvements or betterments, etc., or in any way transferred from earnings to capital account, are not proper deductions in ascertaining annual net income.

Note C. — This return of net income is desired for immediate use and should be given prompt attention and, when properly filled in and executed, should be forwarded, not later than 30 days from the date of receipt of notice, direct to the Commissioner of Internal Revenue, Washington, D. O.

Note D.^-The word "year" as herein used means the calendar or fiscal year, as the case may be, and this return is to show the net earnings for the year as of the date on which the books were closed or the net earnings were ascertained.

"Limited partnerships are held to be corporations within the meaning of this act and these regulations, and in their organized capacity are subject to the income tax as corporations." ^*

§ 76. Corporations, companies and associations which must make return. All corporations, joint-stock companies or associations, and insurance companies, subject to the tax, must make an annual return, under oath or affirmation, by their respective presidents, vice-presidents or other principal officers, and treasurers or assistant-treasurers.^ Under similar language in the Corporation Tax Law of August 5, 1909,* it was ruled: that all corporations, subject to the statute, must make the return whether their income was less than the taxable amount or not.' That corporations organized during the year or going into liquidation during the year must, nevertheless, render a sworn return on the prescribed form.* That where a company

16 Tr. Eeg. 86. ' Opinion of Attorney-General,

§ 76. 1 Subsection G. January 24, 1910.

z 36 Stat, at h. 112, § 38, chap. 6. * Treasury Department, Synopsis (U. S. Comp. Stat. Supp. 1911, p. of Decisions, December 15, 1911j T. 946). D. 1742.

§ 76] COEPOEATIONS WHICH MUST MAKE EETURN. 277

had dissolved and the required return was not made by its officers, such return would be prepared by the Commissioner.* That where a corporation had gone into bankruptcy, returns in such a case must be made by its trustees in bankruptcy.* That foreign companies, having several branch offices in the United States, should each designate one of such branches as its principal office and should also designate the proper officers to make the proper returns.'" That where a consolidation of two or more corporations had been effected during the year, and each or any such corporation subsequent to the consolidation collected prior existing debts, each such corporation should make separate return and include therein all such collected debts, as also all income received during the year therefrom to the date of consolidation.'

It seems that all corporations, joint-stock companies or associations, and insurance companies, which are mortgagors, obligors under bonds or trustees under deeds of trust, under which fixed and determinable annual gains, profits and income are derived from interest thereupon, must make a return of the same, although such interest does not amount to \$3,000.®

The Treasury Regulations provide:

"A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) during which it was engaged in business or had an income accruing to it." ^^

"Corporations going into liquidation during any tax period may, at the time of such liquidation, prepare a 'final return' covering the income received or accrued to them during the fractional part of the year during which they were engaged in business, and immediately file the same with the collector of the district in which the corporations have their principal places of business." "

All firms, companies, copartnerships, corporations, joint-

6T. D. 1736. 9 Subsection B,

« T. D. 1742. 10 Tr. Reg. 84.

'Ibid. 11 Tr. Reg. 85.

8 Hid.

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stock companies or associations, and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, must make such return whenever such persons annual income is equal to at least \$3,000."

"All persons, firms, or corporations undertaking as a matter

of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year or both, in the discretion of the court." '*

"When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view or information, such list or return, according to the form prescribed, of the income * * * liable to tax, owned, or possessed or under the care or management of such person, or corporation, or company, or association." ^*

A previous section of the present law provides: "In cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, * * * the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon in-

18 Subsection D. "U. S. Eev. Stat. § 3176 (U. S.

18 Subsection B, See § 104 infra. Comp. Stat. 1901, p. 2068).

§ Y7] TIME OF EETUEN. 279

formation obtained as provided for in this section or by existing law." "

§ 77. Time of the return. The return must be made by individuals on or before March 1, 1914, and the first day of March in each year thereafter.* When an individual seeks to be allowed the benefit of any deduction authorized by the statute, he must not less than thirty days prior to March first file with the person who is required to withhold and pay tax for him, a true and correct return of his annual gains, profits and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return made in his behalf by the person required to withhold and pay the tax, or else he must make to the collector of the district in which return is made or to be made for him, an application in a similar form for deductions.* The return must be made by a corporation, joint-stock company or association, and insurance

company, subject to the tax, on its own behalf, on or before the first day of March, 1914, and the first day of March in each year thereafter, unless it has designated the last day of any month in the year as the day of the closing of its fiscal year. In such case, it must give notice of the day thus designated to the collector of the district in which its principal business office is located, "at any time not less than thirty days prior to the date upon which its annual return shall be filed." It must then render its return within sixty days after the close of its fiscal year and within sixty days after the close of its fiscal year in each year thereafter.'

IB Subsection G (c). law in existence at the close of a

§ 77. 1 Subsection D. See mfra, calendar year is required to file a

§§ 81, 97. return to cover all or any part of

2 Subsection D. the preceding calendar year during

* Subsection G (c). On Oct. 26, which it may have been in existence

1914, the following regulation was on or before March 1, provided such

adopted and sent to the collectors of corporation has not established or

Internal Revenue: "Reference is does not establish a fiscal year.

made to Treasury Decision No. 2,001, "In order to establish a tiscal yedr

relative to the designation by corpo- it is necessary for the corporation

rations of a fiscal year other than a to give notice to you in writing des-

calendar year as a basis for making ignating the last day of some month

returns of annual net income. as the close of its fiscal year. This

"You are informed that every cor- notice must be filed not less than

poration amenable to the income tax thirty days prior to March 1 of the

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The Treasury Eegulations provide: "The Federal income-tax law authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established 'fiscal year' or consecutive 12-months period, which may be other than the calendar year. Pursuant to this provi-sion the following instructions are issued for the guidance of collectors and other interested parties:

"Any corporation, joint-stock company, or association, or any insurance company subject to the tax imposed by this act may, at its option, have the tax payable by it computed upon the basis

of the net income arising or accruing from all sources during its fiscal year, provided that it shall designate the last day of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, not less than 30 days prior to the date upon which its annual return is to be filed give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.*

"In pursuance of this provision, a corporation or like organization subject to this tax may, for example, designate the

year in which the fiscal year period 1915,) must be filed on or before

of twelve months closes. A return Aug. 29, 1915.

for that portion of the calendar year "ilial portion of the year preceding the commencement of the ing the beginning of an established fiscal period of twelve months is re- fiscal year is held to be a fractional quired to be filed on or before March part of tliu calendar year, and as the 1 of the year next following the return of a calendar year is not re- calendar year of which it is a part, quired to be filed until on or before and the return for the first full fis- the first day of March next foUow- cal year is required to be filed on or ing, there is no provision of law before the last day of the sixty-day whereby the return covering a frac- period following the close of the tion of a calendar year is required fiscal year. to be filed earlier than "on or before"

"Example: A corporation desiring the next March first, though it is to establish its fiscal year as ending preferred that the return for this on June 30, 1915, must file notice fraction shall be filed as early as not less than thirty days prior to possible after the close of the period. March 1, 1915, or on or before Jan. "1 lie above instructions are supple- 29, 1915. A return for the period mental to Treasury Decision 2,00], Jan. 1 to June 30, 1914, must then and rulings or decisions heretofore be filed on or before March 1, 1915, issued in conflict with the foregoing and a return for the first fiscal year are hereby revoked." period (July 1, 1914, to June 30, W. H. Osbobn, Commissioner,

4Tr. Ecg. IBS.

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30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

"The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector not less than 30 days prior to the last day of such 60-day period. In the case just instanced the notice must be given not later than October 29.

"If such designation (September 30, 1913) had been made and notice given, as hereinbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income arising or accruing to it during the period from January 1 to September 30, 1913, both dates inclusive." *

"Collectors of internal revenue receiving notices of the selection and designation of the 'fiscal years,' as above indicated, will make record of the same, recording (a) the name of the corporation or like organization, (h) the date when notice was given, (c) the day designated for the closing of the fiscal year, and (d) the date when the return under such designation must be filed, which must be, as above stated, not later than the last day of the 60-day period next following the day designated as the close of the fiscal year." *

"If it shall appear that for the year 1913 the notice was given within the prescribed time - that is, within 30 days of the last day of the 60-day period - the 1913 return may be made as of the fiscal year so established; otherwise it will be made on the basis of the calendar year until such time as the designation shall be duly made and notice thereof properly given." '

"The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30, 1914, as the date of the closing of its fiscal year and gives notice of such

S Tr. Reg. 168. 7 Tr. Reg. 168.

« Tr. Reg. 167.

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designation, it would not be authorized to make a return for the four months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the case of such corporation the return for the year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the four months ended April 30, 1914, and thereafter the return will be made on the basis of the fiscal year so established." *

"In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year. Such returns in either case provided must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer ; that is to say, by two different persons acting in the official capacity indicated." '

"If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year." ^^

Whether such a corporation, joint^stock company, association or insurance company must make its return of income belonging to a beneficiary of a trust or other person, which it pays at the source thereof, on the first day of March or at sixty days after the time which it has designated for the return of its own net income, is not stated in the Act.

By the Treasury Regulations: "Returns of withholding agents (including those of licensed collecting agents) as to interest payments shall be made monthly and returns containing summaries of said monthly returns shall be made annually.

(See Part 2, A., B., and C.) Returns of individuals (see Part 1), corporations (see Part 3), and withholding agents, withholding tax on wages, salaries, rents, etc. (see Part 2, D), and

STr. Reg. 169. "Tr. Reg. 171.

8Tr. Reg. 170.

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fiduciaries acting as withholding agents (see Part 2, E) shall be made annually. All monthly returns are required to be made on or before the 20th day of each month for the preceding month. All annual returns are required to be made on or before the 1st day of March in each year, except in the case of corporations which have given due notice of the termination of their fiscal year, in which cases the prescribed return is to be filed within 60 days after the termination of such fiscal year." **

"In case of neglect occasioned by sickness or absence, the collector may allow such further time for making or delivering such list or return as he may deem necessary not exceeding thirty days." ^^

"When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return may be granted by the collector, provided a written application therefor is made by the individual within the period for which such extension is desired." ^'

"An extension of time within which a return may be filed can in no case exceed 30 days from the date on which the return is due and can be granted only upon written application to the collector, and in case of sickness or absence of an officer whose signature to the return is required, such application to be made prior to the expiration of the period for which the ex-

tension is desired." ^*

"If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the collector or deputy collector on or before the last due date, no penalty will be held to attach should the return not be actually received by such officer until subsequent to that date." ^*

" 'Last due date,' as hereinbefore used, is construed to mean the last day upon which a return is required to be filed in accordance with the provisions of the law, or the last day of the

"Tr. Reg. 190. 13 Tr. Reg. 23.

12 U. S. Rev. Stat. § 3176, (U. S. 1* Tr. Reg. 173. Comp. Stat. 3901, p. 2068,) a3 15 Tr. Reg. 174. amended by Aet of October 3, 1913, subsection I.

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period not exceeding 30 days covered by an extension of time granted by the collector." ^^

"When the due date as above defined falls on Sunday or on a legal holiday, the last due date will be held to be the day next following such Sunday or legal holiday and the return should be made to the collector not later than such following day, or, if placed in the mails, it should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is thus made due in the office of the collector." ^^

The Revised Statutes as amended provide : "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postoffice, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation." "

By the Treasury Eegulations : "Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045, should in each case be sent to the delinquent. (For authorized extension of time, see articles 23 and 173.)" "

16 Tr. Ee«'. 175. ^7 •** * °^ October 3, ims, II, buV

17 Tr' Reg 176.' section I. See infra, § 87.
isu.'s. Rev. Stat. § 3173, (U. S. "Quoted p. 283, aupra.

Comp. Stat. 1901, 2065,) as amended

§ V7]

TIME OF EETUBIT.

FORM 1045.

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UNITED STATES INTERNAL REVENUE.

NOTICE OF FAILURE TO RENDER A SWORN RETURN OF INCOME
TAXABLE UNDER INTERNAL REVENUE LAWS.

(Note. - Notice on Form 644 will be used in ease of corporations, etc.,
ailing to file returns under the provisions of section 38 of the act of
August 5, 1909.)

United States Internal Revenue,

Office of Collectoe,

To District of

At At

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Your attention is called to the provisions of scetion 2 of the act of
October 3, 1913 (Income Tax Law), relative to filing a sworn return, and

to the penalties imposed by said section for failure to file said return.

As you have failed to file the required return in my office within the prescribed time, you are hereby notified that the above-mentioned penalties have been incurred.

You are also notified that if the required return is not filed with me within ten days from the date hereof it will be my duty to examine your books and papers and to prepare a return therefrom as provided in sections 3173 and 3176 of the Revised Statutes of the United States.

, Collector.

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Endorsement of Form 1045.

PENALTIES FOR FAILURE TO FILE INCORPORATED RETURNS WITHIN THE TIME PRESCRIBED BY LAW.

(In addition to the 50 per cent and 100 per cent penalties assessable under section 3176.)

Individuals, Withholding Agents, and Fiduciaries.

"That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than 50 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year or both, at the discretion of the court, with the costs of prosecution." (Paragraph F, sec. 2, act of October 3, 1913.)

COOPERATIONS.

"If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company, or association, or insurance company shall be liable to a penalty of not exceeding \$10,000." (Subparagraph d of paragraph 6, sec. 2, act of October 3, 1913.)

Under the early statutes it was ruled that a want of notice did not relieve the taxpayer from the statutory penalty.*"

Withholding adults who deduct and pay the tax at the source make returns monthly and annually as well.**

§ 78. Place of return. The return must be made, in the case of an individual, on his own behalf, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States.*

«i 3 Int. Rev. Rec. 161 ; see 1 Int. 8» See infra, § 97.
Rev. Rec. 113. § 78. i II, Subsection D.

§ 78] PLACE OF EETUKN. 287

By the Treasury Eegulations: "If the person making the return of income has his place of business in the collection district in which he resides, the return shall be filed with the collector of that district. If his principal place of business is elsewhere, the return shall be filed in the district in which that business is located.

In the case of an individual residing in a foreign country return shall be made to the collector of internal revenue for the district where his principal business is carried on within the United States." *

The statute and regulations fail to state the place of return by a citizen of the United States who resides in a foreign country and has no place of business here. The statute provides that returns of the net incomes of the persons for whom they act, made by guardians, trustees, executors, administrators, agents, receivers, conservators, or any persons, corporations or associations acting in a fiduciary capacity, shall "be subject to all the provisions of this section which apply to individuals: Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which the acts is recorded," shall be sufficient.' There is room for a difference of construction upon the question, whether by "in the district where such person resides," in this clause, is intended the district of the residence of the person acting in a fiduciary capacity or of that of the beneficiary. The statute further provides that a return made by persons, firms, companies, copartnerships, corporations, joint-stock company or associations, and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to the tax, shall "make and render a return as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person, or stating that the name and

2Tr. Reg. 15. S Ibid.

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address or the addresses, as the case may be, are unknown." *
Apparently the intent is that this return be filed at the residence or principal place of business of the returner. And the Regulations of the Treasury Department so direct.^

The withholding agents or corporations as well as those of individuals file their returns with the collectors of their respective districts.^

What constitutes residence within the act may be a matter of some difficulty. The place where a taxpayer exercises his franchise is ordinarily presumed to be that of his residence.''

Every corporation, joint-stock company, association or insurance company, subject to the tax, must file the return with the collector of the district in which its principal place of business is located.' According to the instructions endorsed on the forms for returns.

"2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept."

"A foreign corporation, association or insurance company must file its return in the place where its principal business is located within the United States." ^ By the Treasury Regulations :

"A foreign corporation having several branch offices in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return.^"

COLLECTION DISTRICTS; HOW NUMBERED.

For the purpose of assessing, levying and collecting internal revenue taxes the law provides that the President may establish convenient collection districts, the number of which, however, is limited by law, which at the present time is sixty-three districts.

At one time there were as many collection districts as there were representatives in Congress, and they were numbered consecutively for each state.

The number of districts was afterwards reduced, but each newly formed district retained the original number assigned to the district in which the collector's office is located.

For example, the collection district with headquarters at Buffalo, N. Y.,

illid. 8 Subsection G (c).

6Tr. Reg. 35. 9 TOd.

8Tr. Reg. 35, 36. "Tr. Reg. 83,
' See Foster, Fed. Pr. 5th ed. § 46.

§ 78]

PLACE OF EETUEIT.

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is the 28th District of New York, although the State of New York now has but six collection districts.

In Pennsylvania the district including Philadelphia is number 1, the original number for that district, and the Pittsburgh district is number 23, the original number for that district, although there are now but four collection districts in the State of Pennsylvania.

Changes in the territory of districts are made from time to time but the name and address of the collector for any district is easily ascertained upon inquiry at any cigar store, bank, etc.

LOCATION OF COLLECTORS' OFFICES.

Birmingham Ala.
Alabama, (including the State of Mississippi).

Arkansas, Little Rock, Ark.

1st California, (including the counties of Alameda, San Francisco, Cal
Alpine, Amador, Butte, Colusa, Calaveras, Contra
Costa, Del Norte, Eldorado, Fresno, Glenn, Hum-
bolt, Inyo, Kings, Lake, Lassen, Marin, Mendo-
cino, Modoc, Madera, Maripose, Merced, Mono,
Monterey, Napa, Nevada, Placer, Plumas, Sac-
ramento, Shasta, Sierra, Siskiyou, Solano, Sonoma,
Sutter, San Francisco, San Joaquin, San Mateo,
Santa Clara, Santa Cruz, Stanislaus, Tulare,
Tuolumna, Tehama, Trinity, Yolo, and Yuba, and
the State of Nevada).

6th California, (including counties of Imperial, Kern, Los Angeles, Cal.
Los Angeles, Orange, Riverside, San Bernardino,
San Diego, San Luis Obispo, Santa Barbara, and

Ventura).

Colorado, (including the State of Wyoming). Denver, Colo.

Connecticut, (including the State of Rhode Island). Hartford, Conn.

Florida, Jacksonville, Fla.

Georgia, Atlanta, Ga.

Hawaii, Honolulu.

Ist Illinois, (including the counties of Boone, Carroll, Chicago, 111. Cook, DeKalb, Dupage, Grundy, Jo Daviess, Kane, Kankakee, Kendall, Lake, Lasalle, Lee, McHenry, Ogle, Stephenson, Whiteside, Will, and Winnebago).

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5th niinois, (including the counties of Bureau, Peoria, 111. Henderson, Henry, Knox, Marshall, Mercer, Peoria, Putnam, Rock Island, Stark, and Warren). .

8th Illinois, (including the counties of Adams, Springfield, 111. Bond, Brown, Calhoun, Cass, Champaign, Christian, Coles, Cumberland, Dewitt, Douglas, Edgar, Ford, Fulton, Greene, Hancock, Iroquois, Jersey, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Piatt, Pike, Sangamon, Schuyler, Scott, Shelby, Tazewell, Vermilion, and Woodford).

13th Illinois, (including the counties of Alexander, E. St. Louis, III. Clarke, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, St. Clair, Saline, Union, Wabash, Washington, Wayne, White and Williamson).

6th Indiana, (including the counties of Adams, Indianapolis, Ind.

Allen, Bartholomew, Benton, Blackford, Brown, Cass, Dearborn, Decatur, DeKalb, Delaware, Elkhart, Fayette, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, Laporte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Morgan, Newton, Noble, Ohio, Porter, Pulaski, Randolph, Ripley, Rush, St. Joseph, Shelby, Starks, Steuben, Switzerland, Tipton, Union, Wabash, Wayne, Wells, White, and Whitley).

7th Indiana, (including the counties of Boone, Carroll, Clark, Clay, Clinton, Crawford, Daviess, Dubois, Floyd, Fountain, Gibson, Greene, Harrison, Knox, Martin, Montgomery, Orange, Owen, Parke, Perry, Pike, Posey, Putnam, Scott, Spencer, Sullivan, Tippecanoe, Vanderburg, Vermilion, Vigo, Wairen, Warrick, and Washington).

3rd Iowa, (including the State of Iowa),
Kansas,

Dubuque, Ia.
Leavenworth,

Kansas,

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2nd Kentucky, (including the counties of Allen, Owensboro, Ky. Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Fulton, Graves, Grayson, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, McLean, Marshall, Metcalfe, Monroe, Muhlenberg, Ohio, Russell, Simpson, Todd, Trigg, Union, Warren, and Webster).

5th Kentucky, (including the city of Louisville and Louisville, Ky. the counties of Adair, Bullitt, Casey, Green, Harnden, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Owen, Shelby, Spencer, Taylor, and Washington).

6th Kentucky, (including the counties of Boone, Covington, Ky. Bracken, Campbell, Carroll, Gallatin, Grant, Harrison, Kenton, Pendleton, Robertson and

Tribble).

7th Kentucky, (including the counties of Bath, Lexington, Ky. Bourbon, Boyd, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Greenup, Johnson, Lawrence, Lewis, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Powell, Rowan, Scott, and Woodford).

8th Kentucky, (including the counties of Anderson, Danville, Ky, Bell, Boyle, Breathitt, Clay, Estill, Floyd, Garrard, Harlan, Jackson, Jessamine, Knott, Knox, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Mercer, Owsley, Perry, Pike, Pulaski, Rockcastle, Wayne, Whitley, and Wolfe).

Louisiana, New Orleans, La»

Maryland, (including the State of Delaware, and Baltimore, Md. the District of Columbia).

Massachusetts, Boston, Mass.

1st Michigan, (including the counties of Alcona, Detroit,, Michv Alpena, Arenac, Bay, Branch, Calhoun, Cheboygan, Clare, Clinton, Crawford, Genesee, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Iosco, Isabella, Jackson, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montmorency, Oakland, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, Tuscola, Wash-tenaw, and Wayne).

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4th Michigan, (including the counties of Alger, Grand Rapids, Mich. Allegan, Antrim, Baraga, Barry, Benzie, Berrien, Cass, Charlevoix, Chippewa, Delta, Dickinson, Eaton, Emmet, Gogebic, Grand Traverse, Houghton, Ionia, Iron, Kalamazoo, Kalkaska, Kent, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Missaul<ee, Montcalm, Muskegon, Newaygo, Oceana, Ontonagon, Osceola, Ottawa, St. Joseph, Schoolcraft, Van Buren, and Wexford).

Minnesota,

St. Paul, Minn,

1st Missouri, (including the counties of Adair, St. Louis, Mo, Audrian, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Crawford, Dent, Dunklin, Franklin, Gasconade, Howard, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Madison, Maries, Marion, Mississippi, Montgomery, Monroe, New Madrid, Oregon, Osage, Penbiscot, Perry, Phelps, Pike, Pulaski, Halls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, Ste. Genevieve, St. Louis, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Warren, Washington, and Wayne) .

6th Missouri, (including the counties of Andrew, Kansas City, Mo. Atchison, Barry, Barton, Bates, Benton, Buchanan, Caldwell, Camden, Carroll, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cole, Cooper, Dade, Dallas, Daviess, Dekalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howell, Jackson, Jasper, Johnson, Laclede, Lafayette, Lawrence, Livingston, McDonald, Mercer, Miller, Moniteau, Morgan, Newton, Nodaway, Ozark, Pettis, Platte, Polk, Putnam, Ray, St. Clair, Saline, Stone, Sullivan, Taney, Texas, Vernon, Webster, Worth, and Wright).

Montana, (including the states of Utah and Idaho). Salt Lake City, Utah.

Nebraska,

Omaha, Nebr.

New Hampshire, (including the states of Maine and Portsmouth, N. H. Vermont),

1st New Jersey, (including the counties of Atlantic, Camden, N. J.

Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem).

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5th New Jersey, (including the counties of Bergen, Newark, N. J. Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren).

New Mexico, (including the State of Arizona). Santa Fe,

New Mexico.

1st New York, (including the counties of Kings, Brooklyn, N. Y. Nassau, Queens, Richmond, and Suffolk) .

2nd New York, (including the first, second, third, New York, N. Y. fourth, fifth, sixth, eighth, ninth, and fifteenth wards of New York City; that portion of the fourth- Custom House, teenth ward lying west of the center of Mott Street; that portion of the sixteenth ward lying south of the center of West Twenty-fourth Street, and Governors Island) .

3rd New York, (including the seventh, tenth, New York, N. Y. eleventh, twelfth, thirteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and 167 Third Avenue, twenty-second wards of New York City; that part of the fourteenth ward lying east of the center of Mott Street; that part of the sixteenth ward lying north of the center of West Twenty-fourth Street and Blackwells, Randalls, and Wards Islands) .

14th New York, (including the counties of Albany, Albany, N. Y. Clinton, Columbia, Dutchess, Essex, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, Washington, and Westchester, and the twenty-third and twenty-fourth wards of New York City).

21st New York, (including the counties of Broome, Syracuse, N. Y. Cayuga, Chenango, Cortland, Delaware, Franklin, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, St. Lawrence, Schuyler, Seneca, Tioga, Tompkins, and Wayne).

28th New York, (including the counties of Allegany, Rochester, N. Y. Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wyoming, and Yates) .

EETUENS.

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ith North Carolina, (including the counties of Ala- Raleigh, N. O. manee, Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Caswell, Chatham, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Durham, Edgecombe, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Tyrell, Vance, Wake, Warren, Washington, Wayne, and Wilson).

5th North Carolina, (including the counties of Statesville, N. C. Alexander, Alleghany, Anson, Ashe, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Haywood, Henderson, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Mechlenberg, Mitchell, Polk, Rowan, Rutherford, Stanly, Stokes, Surry, Swain, Transylvania, Union, Watauga, Wilkes, Yadkin, and Yancey).

North and South Dakota,

Aberdeen, S. Dak.

1st Ohio, (including the counties of Brown, Butler, Cincinnati, O. Clarke, Clermont, Clinton, Fayette, Greene, Hamilton, Highland, Montgomery, Preble, Miami, and Warren).

10th Ohio, (including the counties of Allen, Auglaize, Toledo, Ohio. Champaign, Crawford, Darke, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Logan, Lucas, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Shelby, Van Wert, Williams, Wood, and Wyandot).

11th Ohio, (including the counties of Adams, Athens, Columbus, O. Coshocton, Delaware, Fairfield, Franklin, Gallia, Guernsey, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Marion, Meigs, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Scioto, Union, Vinton and Washington).

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18th Ohio, (including the counties of Ashland, Ashtabula, Belmont, Carroll, Columbiana, Cuyahoga, Geauga, Harrison, Holmes, Jefferson, Lake, Lorain, Mahoning, Medina, Monroe, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne).

Oklahoma,

Oregon,

Cleveland, U.

Oklahoma, Okla.

Portland, Ore.

1st Pennsylvania, (including the counties of Berks, Philadelphia, Pa. Bucks, Chester, Delaware, Lehigh, Montgomery, Philadelphia, and Schuylkill).

9th Pennsylvania, (including the counties of Adams, Lancaster, Pa. Bedford, Blair, Bradford, Cumberland, Carbon, Center, Clinton, Columbia, Dauphin, Franklin, Fulton, Huntington, Juniata, Lancaster, Lebanon, Lackawanna, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northampton, Northumberland, Pike, Potter, Perry, Snyder, Sullivan, Susquehanna, Tioga,

Union, Wayne, York, and Wyoming).

23rd Pennsylvania, (including the counties of Pittsburgh, Pa. Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland).

South Carolina,

Tennessee,

Texas,

Columbia, S. C.
Nashville, Tenn.
Austin, Texas

2nd Virginia, (including the counties of Amelia, Kichmond, Va. Appomatox, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Elizabeth City, Essex, Fluvanna, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Louisa, Lunenburg, Mathews, Middlesex, Nansemond, New Kent, Norfolk, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Princess Anne, Richmond, Stafford, Southampton, Spottsylvania, Surry, Sussex, Warwick, Westmoreland, and York).

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6th Virginia, (including the counties of Albemarle, Abingdon, Va. Alexandria, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Clarke, Craig, Culpeper, Dickenson, Fair-

fax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Loudoun, Madison, Mecklenburg, Montgomery, Nelson, Orange, Page, Patrick, Pittsylvania, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe).

Washington, (including Alaska).

Tacoma, Wash.

West Virginia,

Parkersburg, W. Va.

1st Wisconsin, (including the counties of Brown, Milwaukee, Wis. Calumet, Dodge, Door, Florence, Fond du Lao, Forest, Green Lake, Kenosha, Kewaunee, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and county of Langlade with exception of the eight townships of said county which were formerly in Lincoln County).

2nd Wisconsin, (including the counties of Adams, Madison, Wis. Ashland, Barron, Bayfield, Buflalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Douglas, Dunn, Eau Clarie, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, St. Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, Wood, and the eight townships in the western part of Langlade County which were formerly in Lincoln County) .

(This is taken from the valuable pamphlet by Mr. Luther F. Speer, Deputy Commissioner of Internal Revenue.)

§ 79. Contents of returns by individuals. "On or before the first day of March, nineteen hundred and fourteen and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of \$3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals; Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph ; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each

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person from which, the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any such tax to be withheld prior to the first day of November, 1913. Provided further, That in either case above mentioned no return of income not exceeding \$3,000 shall be required: Provided, further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or

otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: Provided, further. That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it." ^

The Treasury Department has promulgated the following form and instructions for return by individuals of their income.

§ 79. 1 Act of October 3, 1913, II, subsection D.

■§ 79] CONTENTS OF EETUENS BY INDIVIDUALS. 2991

Xo be Filled In by Form 1040 (Revised.) Xo be Filled in by Internal Collector. Revenue Bureau.

Assessment List 23-B File No

(Month) IMCOMi: TAX.

Examined by

Folio Line

Xhe Penalty

Audited by - .

For failure to have this
Return in the hands of
the Collector of Internal Revenue on or before March 1 is \$20 to
Above space to be stamped \$1,000.
by Collector, showing

district and date received, (See instructions on page 4.)

IMPORTANT.

Read this form through
carefully. Fill in pages 2
and 3 before making en-
tries on first page.

United States Internal Revenue.

RETURN OF ANNUAL NET INCOME OF INDIVIDUALS.

(As provided by Act of Congress, approved October 3, 1913.)

Income received or accrued duringr the year ended December 31, 191-
Filed by (or for) , of

(Street and number.)

(Post-office address.) (State.)

Complete Answers Should be Given to the Following Questions.

Did you render a return of Income for the preceding year? If so, in what
Internal Revenue District was it filed? Were you single or married
with wife or husband living with you on December 31, of the year for which
this return la rendered? If married, give full name of wife
or husband Has your wife or husband income from
sources independent of your own? Have you in-
cluded your wife's or husband's income In this return? .

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D9

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Thousands

Hundreds
Cents

1. Gross Income (brought from line 28)

2. General Deductions (brought from li

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ne 36) .

3. Net Income

s

"T'TTT"

Specific deductions and exemptions allowed in computing: normal tax of 1 per cent.

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•a

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p

o

H

Hundreds

Cents

4. Dividends (brought from line 27)

s

B. Income on which the normal
tax has been paid or is to
be paid at the source
(brought from line 23, Col-
umn A)

1

6. Specific exemption of \$3,000, or
\$4,000, as the case may be -

\$-.

Note - If separate return is f Husband

..\$

made by husband or wife J
and exemption is prorated, 1
state amount claimed by : L Wife

7. Total deductions and exempt
5, and 6)

IS

ions (Items 4,

8. Taxable Income on which the normal tax of 1 per <
is to be calculated -

>ent

1 M M

\$ 79]

CONTENTS OF EETUENS BY INDIVIDUALS.

Kote. - When the net income shown above on line 3 exceeds \$20,000 the additional tax thereon must be calculated as per schedule below.

Income.

Tax.

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B

Hundreds

Cents

Millions

Thousands

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1 s

One per cent on amount over
\$20 000 ana not exceeaiing \$50,000 -

\$

\$

Two per cent on amount over

\$

\$ _

Three per cent on amount over
\$75,000 and not exceeding \$100,000.

Four per cent on amount over
\$100,000 ana not exceeaiing \$250,000

Five per cent on amount over
\$250,000 ana not exceeaiing \$500,000

Six per cent on amount over
S^f10 000 -

\$

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\$ - _-

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\$

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\$.. _

10. Total normal tax (1 per cent
entered on line 8) - -

t of amount

t entered

\$

11. Total tax to be paid

- 5

302

EETUKNS.

[\$ 79

GROSS INCOME.

This statement must show in the proper spaces the ENTIRE AMOUNT of gains, profits, and income received by or accrued to the individual from all sources during the year specified on page 1, EXCEPT income derived from the obligations of the United States or any of its possessions, or of any State or political subdivision thereof, including district drainage bonds; and amounts paid by a State or any political subdivision thereof for services rendered as an officer or employee.

DESCRIPTION OF INCOME.

Note.— If husband and wife render separate returns, only the income and deductions of the husband or wife (as the case may be) who renders this return shall be included herein, but if separate returns are not rendered by both husband and

wife the Income and deductions of both husband and wife shall be Included sep;irately as provided on this form.

A.

Income on which th
tax has been paid o
is to be paid at th(
source.

B.

5 Income on which the
t tax has NOT been
J paid or is not to be
paid at the source.

Total amount derived from-

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Cents
Millions

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Wife's income

13. Professions and vocations -
Wife's Income

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14. Business, trade, commerce, or
sales, or dealings in prop-
erty, whether real or per-
sonal

15. Rents

Wife's income

16. Interest on notes, mortgages,
bank deposits, and securities
other than reported on lines
17 and 20

17. Interest on bonds, mortgages
or deeds of trust, or other
similar obligations of do-
mestic corporations, joint
stock companies or associa-
tions, and insurance corn-

Wife's income

18. Fiduciaries * (excepting dividends from domestic corporations, which must be included as Indicated in line 26 below)

Wife's income

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◆ Therp should be included xinder this item all Income received from guar-
dinns. trnmtees, executors, administrators, agents, receivers, conservators,
or
other persons rietins in a fiduciary capacity.

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CONTENTS OF EETUENS BY INDIVIDUALS.

303

19. Partnership gains and profits,

whether distributed or not.
(net gains or profits must
be reported here)

Wife's income

20. Interest upon bonds issued in

foreign countries and upon
foreign mortgages or like
obligations (not payable in
the United States), and also
dividends upon the stock or
interest upon the obligations
of foreign corporations, as-
sociations, and insurance
eompanles engaged in busi-
ness In foreign countries

Wife's income

21. Royalties from mines, oil

wells, patents, franchises, or
other legalized privileges .-

Wife's income

22. Other sources not enumerated

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Wife's income

Note.- State here sources

from which Income entered on line 22 Is received and amount received from each.

23. Totals (Note.— Enter total of Column A on line 5)

\$-

\$-

24. Aggregate Totals of Colun

ins A and B

\$-

\$-

-

25. Dividends on stock or from
the net earnings of domestic
corporations, joint - stock
companies, associations, or
insurance companies subject
to like tax

\$

26. Dividends received through
fiduciaries (see line 18)

27. Total Dividends (to be ent

28. Total Gross Income (to be

ered on line 4)

entered on line 1)

-

304

EETUENS.

GENERAL DEDUCTIONS.

[§ 79

Note. — Claims for deductions can not be allowed unless the information required below is clearly set forth.

CO

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B

29. The amount of necessary expenses actually paid within the calendar year, for which the return is made, in carrying on any individual business. There must not be included under this head personal, living, or family expenses, business expenses of partnerships, or cost of merchandise. Amounts paid for permanent improvement or betterment of property are not proper expense deductions

\$

Wife's deduction " __

Note.— State on the following lines the principal businesses in which the above expenses were incurred.

30. All interest paid within the year on personal indebtedness of taxpayer

Wife's deduction

31. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)

Wife's deduction -

32. Losses factually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated by insurance or otherwise

Wife's deduction

Note.— State (a) of what the loss consisted, (b) when it was actually sustained, and (c) how it was determined to be a loss.

33. Debts past due which have been actually ascertained to be worthless and which have been charged off within the year __

Note.— State (a) of what the debts consisted, (b) when they were created, (c) when they became due, and (d) how they were actually determined to be worthless.

34. Amount representing a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in business. No deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which a deduction is claimed elsewhere in this return

Wife's deduction

Note. — State (a) what the property was on which depreciation is taken (if buildings, state when of same, as of January 1, of the calendar year for which this return is rendered), and (6) what percentage of depreciation is claimed.

.

35. Amount allowed to cover depletion, in case of mines and oil wells, not to exceed 5 per cent of the gross value at the mine or well of the output for the calendar year for which this return is rendered

Note. - State (a) cost of mine or well, (b) gross value at the mine or well of the output for the calendar year for which this return is rendered, and (c) what percentage of depletion is claimed.

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36. Total "General Deductions" (to be entered on line 2) -

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Note.- If space is insufficient for answering any questions, attach a supplemental sheet to this return.

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CONTENTS OF EETUENS BY INDIVIDUALS. 305

AFFIDAVIT TO BE EXECUTED BY INDIVIDDAI, MAKING HIS OWN

BBTUBN.

I swear (or affirm) that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all taxable gains, profits, and income received by or accrued to me during the year for which the return is made, and that I am entitled to all the deductions and exemptions entered or claimed therein under the Federal Income Tax Law of October 3, 1313.

(Signature of individual.)

Sworn to and subscribed before me this day of , 191

[Seal]

(Official capacity.)

AFFIDAVIT TO BE EXECUTED BY DULY AUTHORIZED AGENT MAKING
RETURN FOR INDIVIDUAL.

I swear (or affirm) that I have sufficient knowledge of the affairs and prop-
erty of to enable me to make a full and complete

return of the taxable income thereof, and that the foregoing return, to the
best of my knowledge and belief, contains a true and complete statement of
all the taxable gains, profits, and income received by or accrued to said in-
dividual during the year for which the return is made, and that the said
individual is entitled under the Federal Income Tax Law of October 3, 1913,
to all the deductions and exemptions entered or claimed therein, and that I
am authorized to make this return for the following reasons :

(Signature of agent.)

(Post-office address of agent.)

Sworn to and subscribed before me this day of , 191

[Seal]

(Official capacity.)

INSTRUCTIONS.

1. This return shall be made by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, having a net income of \$3,000, or over, for the taxable year.
2. This return shall be made by every nonresident alien deriving any net income from property owned and business, trade, or profession carried on in the United States by him. No specific exemption is allowed nonresident aliens.
3. When an individual by reason of minority, sickness, or other disability, or absence from the United States, is unable to make his own return, it may be made for him by his duly authorized representative.
4. This return should be filed with the Collector of Internal Revenue for the district in which the individual resides. In case the person resides in a foreign country, then with the collector for the district in which his principal business is carried on in the United States.

5. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return may be granted by the collector provided a written application therefor is made by the individual within the period for which such extension is desired.

6. This return, properly filled out, must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths.

7. An unmarried individual or married individual not living with husband or wife shall be allowed an exemption of \$3,000. When husband and wife live together they shall be allowed jointly a total exemption of only \$4,000 on their aggregate income. Either husband or wife may make, sign, and verify a return of their joint income. Where husband and wife have separate incomes they make a joint return of such separate income, both subscribing to the return or they may make separate returns of their respective incomes, but in no case shall they claim or be allowed more than \$4,000 exemption on their aggregate incomes.

8. Amounts charged on line 29 for restoring property or making good the exhaustion thereof from its use in business, together with the amount claimed for depreciation on line 34, must not exceed the deterioration of the property in one year. i- »- j

Foster Income Tax. - 20.

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INSTRUCTIONS ANNEXED TO ORIGINAL FORM 1040.

1. This return shall be made by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, having a net income of \$3,000 or over for the taxable year, and also by every nonresident alien deriving income from property owned and business, trade, or profession carried on in the United States by him.

2. When an individual by reason of minority, sickness or other disability, or absence from the United States, is unable to make his own return, it may be made for him by his duly authorized representative.

3. The normal tax of 1 per cent shall be assessed on the total net income less the specific exemption of \$3,000 or \$4,000 as the case may be. (For the year 1913, the specific exemption allowable is \$2,500 or \$3,333.33, as the case may be.) If, however, the normal tax has been deducted and withheld on any part of the income at the source, or if any part of the income is received as dividends upon the stock or from the net earnings of any corporation, etc., which is taxable upon its net income, such income shall be deducted from the individual's total net income for the

purpose of calculating the amount of income on which the individual is liable for the normal tax of 1 per cent by virtue of this return. (See page 1, line 7.)

4. The additional or super tax shall be calculated as stated on page 1.

5. This return shall be filed with the Collector of Internal Revenue for the district in which the individual resides if he has no other place of business, otherwise in the district in which he has his principal place of business; or in case the person resides in a foreign country, then with the collector for the district in which his principal business is carried on in the United States.²

6. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.⁸

7. The penalty for failure to file the return within the time specified by law is \$20 to \$1,000. In case of refusal or neglect to render the return within the required time (except in cases of sickness or absence), 50 per cent shall be added to amount of tax assessed. In case of false or fraudulent return, 100 per cent shall be added to such tax, and any person required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.*

8. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding

i Supra, § 57. * Infra, § 64.

s Supra, § 56.

§ 79] CONTENTS OF RETURNS BY INDIVIDUALS. 307

30 days from March 1, within which to file such return, may be granted by the collector, provided an application therefor is made by the individual within the period for which such extension is desired.⁶

9. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a justice of the peace or magistrate, not using a seal, a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return.

10. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income. In case an individual owns his own residence he cannot deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.⁶

11. The farmer, in computing the net income from his farm for his

annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.'

When animals were raised by the owner and are sold or slaughtered he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The case of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.⁸

12. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return can be deducted.⁹

13. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.¹⁰

14. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall

⁵ Supra, § 66. ⁸ Supra, § 42.

⁶ Supra, § 43. ⁹ Supra, § 47.

¹ Supra, §§ 35, 41. ¹⁰ Supra, §§ 37-39,

a08 EETUENS. [§ 79

subsequently prove to be worthless, they may be deducted under the head of losses in the return for the year in which such debts were charged off as worthless.¹¹

15. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.¹²

16. United States pensions shall be included as income.

17. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.¹³

18. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

19. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of \$3,000. When husband and wife live together they shall be allowed jointly a total exemption of only \$4,000 on their aggregate income. They may make a joint return, both subscribing thereto, or if they have separate incomes, they may make separate returns; but in no case shall they jointly claim more than \$4,000 exemption on their aggregate income.^{1*}

20. In computing net income there shall be excluded the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.¹⁵

"Income paid by 'debtors' from March 1 to November 1, 1913, shall be included in the return of the individual (under column B, page 2, of Form 1040) as income upon which the normal tax of one per cent, has not been withheld and paid at the source. Income received by individuals between November 1 and December 31, 1913, upon which the normal tax has been withheld at the source shall be included in their annual return (under column A, page 2, of Form 1040) as income upon which the tax has been paid." ¹⁶

§ 80. Contents of returns by fiduciary agents. The

Treasury Regulations provide: "Fiduciaries shall, on or before March 1 of each year, make and render a return of the income coming into their custody or control and management from each trust or estate when the annual interest of any beneficiary in said trust or estate is in excess of \$3,000. This return (Form 1041) must be filed with the collector for the district in which the fiduciary resides or has his principal place of business, and shall contain an itemized statement of the gross income and deductions claimed.

"Notice of failure to file return as required shall be served upon the fiduciary. (See art. 18.) *

¹¹ But see supra, § 68. ¹⁵ Supra, §§ 28, 56.

¹ⁱ Supra, § 75. « T. D. 1967.

¹³ Supra, §§ 58, 64. § 80. ¹ See infra, § 87.

^{1*} Supra, § 72.

§ 80] EETUENS BY FIDUCIARY AGENTS. 309

"The entries on the first page of Form 1041 in column headed 'Amount of income paid or accrued to beneficiaries' should not include their respective shares of income derived from dividends on the stock or from the net earnings of corporations,

joint-stock companies, etc., subject to like tax or the income on which the normal tax of 1 per cent has been deducted and withheld at the source by the debtor or the prior withholding agent, as these two items of income are treated as deductions in determining the amount of income subject to tax for which the fiduciary as withholding agent has to account.

"When the share of any beneficiary, therefore, in the amount stated on line 3 of the first page of said return is in excess of \$3,000, return must be made." "

"As each such fiduciary acts solely in behalf of the beneficiaries of the trust, the annual return required in such cases has reference only to the income accruing and payable through said fiduciary, and not to the income of the beneficiary derived from other sources. If, however, such fiduciary is legally authorized to act for such beneficiary as agent or attorney in fact, he may in such case also make for the beneficiary the personal annual return (Form 1040) ' required by law." *

"The annual return of the fiduciary shall contain a list of the name and full address of each beneficiary and the share of said income to which each may be entitled. There must also be entered opposite the name of each beneficiary the amount of exemption, if any, claimed by him, the amount of income on which the fiduciary is liable for tax, and the amount of tax withheld, and the said return shall be signed and sworn to by the fiduciary, if an individual, making same, and his full address must be stated. If the fiduciary is an organization, the return shall be signed and sworn to by the president, secretary, or treasurer of said organization." *

"Fiduciaries having control of any portion of an annual income accruing during the year, but not distributed or paid to the beneficiaries during the year, shall, in rendering their annual return (Form 1041), give the name and address of each

8Tr. Reg. 71. 4Tr. Reg. 72.

« Supra, § 79, t Tr. Reg. 73.

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of said beneficiaries having a distributive interest in said income, and shall furnish all information called for in such returns. The fiduciary shall in all such cases withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said beneficiaries when in excess of \$3,000, the same as if said income was actually distributed and paid. Exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent." '

"When the normal tax on undivided annual net income has been so withheld, such tax shall not be again withheld when

such portion of the income is actually distributed and paid to said beneficiary." ' '

Prior to the consolidation of the Regulations, the Treasury Department ordered: "Fiduciary agents, in addition to the annual return of income required by these regulations, shall make an annual list return, as provided by regulations for withholding agents, whenever payment of income to any beneficiary is in excess of \$3,000. Said list return shall be made on or before March 1 of each year to the collector of internal revenue for the district in which said fiduciary resides or has his principal place of business, giving name and address of each beneficiary of said trust, to whom annual income in excess of \$3,000 is paid, the amount of income paid to each beneficiary, giving source of income, the amount of exemption claimed by each beneficiary, if any, and the amount of income withheld for tax, and the said list return shall be signed by the fiduciary making same, stating in what capacity acting, and give his name and full address. Fiduciaries having an annual income that is not distributed or paid to the beneficiaries of the trust under which said fiduciary acts shall make an annual list return, as provided herein, and said list return shall show the name and address of each beneficiary having a distributive interest in said income in excess of \$3,000, stating the distributive amount of each beneficiary, and shall give all information as required in said list returns, and shall withhold and pay to the collector,

8Tr. Reg. 74. See Form 1007, iTi- ^Tr. Reg. 75. See infra, § 102. fra, § 81.

§ 80} EETUENS BY PIDUGIAEY AGENTS. 311

as provided by law, the normal tax of 1 per cent, upon the distributive interest of each of said beneficiaries in excess of \$3,000, the same as if said income was actually distributed and paid; exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent. "When the fiduciary agents deduct, withhold and pay the normal tax on undivided annual net income as provided herein they shall not be required to withhold and pay again the normal tax on said income when actually distributed and paid to said beneficiaries, nor shall the beneficiaries be required again to pay the normal tax upon the amounts on which the tax has been paid when such amounts are distribvited. Where the normal tax is withheld and paid by fiduciary agents on undivided annual income beneficiaries (or their legal representatives) in whose behalf said tax is paid may file notice with said fiduciary and claim the benefit of any annual exemption they may be entitled to under paragraph C of the act of October 3, 1913, as provided by regulations, the same as if their distributive interest in same income was actually paid." ' '

"Where a decedent died after March 1 in the year 1913, and from March 1 up to the date of his death had a net income of

\$2,500 or more, the fiduciary (i. e., the executor or administrator) should make a return for the decedent on Form 1040 and the income tax, both normal and additional, shown to be due thereon will be a debt against the estate of the decedent. The same principle will apply to subsequent years if the net income of the decedent from January 1 to the date of his death amounts to \$3,000 or more, no other return is required to be made by the fiduciary until the settlement of the estate has reached the stage when the beneficiaries thereof and their respective interests in the income derived from the estate are determinable, and then the fiduciary is required to file a return on or before March first of each year as prescribed by the regulations.

"The fiduciary will enter on page 2 of Form 1041, under the appropriate heads, all income accruing to the beneficiaries of

» T. D. 1906. Nov. 28, 1913. See *infra*, §§ 81, 102.

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the trust or estate from March 1 to December 31, 1913, inclusive; but the interest derived from the obligations of a State or any political subdivision thereof and the obligations of the United States or its possessions, is not to be included.

"The fiduciary will enter on page 3 of Form 1041, for the year 1913, five-sixths of the deductions allowable under paragraph B of the law, and on line 1 it will be proper for the fiduciary to enter all legitimate expenses incurred in administering the estate or trust. If the fiduciary holds and rents business or residential property and pays insurance, water rents, commissions for the collection of rents, or any other necessary expenses in managing the estate or trust, it will be proper to enter same on line 1 as an allowable deduction.

"The amount to be shown on page 1, line 3, will represent the total amount of income accruing through the fiduciary to the beneficiaries of the estate or trust which is subject to the normal tax, and when the interest of any one beneficiary in this amount from November 1 to December 31, 1913, inclusive, was in excess of \$3,000, whether distributed or not, the fiduciary was required to withhold and pay the normal tax on the whole \$3,000 and excess thereof, unless the beneficiary filed with the fiduciary Form 1007, as prescribed by the regulations, claiming exemption under paragraph C, and in that event the fiduciary was only required to withhold and pay the normal tax on the amount in excess of the exemption claimed.

"Treasury Decision 1906 prescribes that when fiduciaries make their annual return, they shall give the name and full address of each beneficiary and the share of income to which each may be entitled, which information shall be given on page 1 of Form 1041. In the column 'Amount of income paid or accrued to beneficiaries,' should be entered the respective interest of the beneficiary in the amount of income as shown on page 1, line 3.

"When the interest of any beneficiary in the amount of income subject to the normal tax, as shown on Form 1041, page 1, line 3, is in excess of \$3,000, and the same was paid to the beneficiary within the period from Ifovember 1 to December 31, 1913, both dates inclusive, the fiduciary was required to withhold and pay the normal tax, as prescribed by the regulations, and the in-

§ 80] EETUKNS BY FIDUCIAEY AGENTS. 313

formation required should be given on Form 1041, page 1, giving the name and full address of each beneficiary, the amoimt of income paid or payable to each beneficiary, (this amount would be the beneficiary's interest in the amount of income subject to the normal tax as shown on line 3), the amount of exemption claimed under paragraph C (if any), the amount of income on which normal tax should be withheld, and the amount of tax withheld, all to be given in the respective columns in the order named.

"A fiduciary acting for a minor or insane person who had a net income of \$2,500 or more for the year 1913, will make the return for his ward on Form 1040 and will not be required to file a return on Form 1041, unless he has more than one ward by reason of the same estate or trust, then in that event a return will be required on Form 1041, and a separate return on Form 1040 for each ward having a net income of \$2,500 or more for the year 1913.

"The income accruing or paid to a beneficiary through a fiduciary may be composed in part of dividends, or income upon which the normal tax has been withheld and paid or to he paid at the source, or income derived from the obligations of a State or any political subdivision thereof or from the obligations of the United States or its possessions (income from obligations of a State or any political subdivision thereof and from the obligations of the United States or its possessions is not subject to the tax and should not be included). If a beneficiary has other income which, added to the income accruing to him through his fiduciary, gives him a net income of \$2,500 or more for the period from March 1 to December 31, 1913, inclusive, he should make a return of his gross income on Form 1040, as required by the regulations.

"To illustrate : If a fiduciary's gross income was \$10,000, derived from the following sources :

1. Interest upon the obligations of the United States . . \$1,000
2. Dividends on stock or net earnings of corporations . 2,000

q

Interest from bonds containing "Tax free covenant clause," upon which the fiduciary did not claim any exemption at source and which he entered on Form 1041, on page 2, column A, as income on

which normal tax was withheld 2,000

4. Income from rents, etc 5,000

\$10,000

"The fiduciary's return on Form 1041 would show as follows:

Page 2. Line 3, column B, amount of rents \$5,000

Line 5, interest from bonds, "tax-free clause,"
column A 2,000

Line 10, dividends 2,000

Aggregate total of gross income \$9,000

(No entry of interest on T.J. S. bonds, . \$1,000)

Page 3. Line 1, necessary expenses actually paid in carrying on business, including compensation of fiduciary, water rents, insurance,

etc \$450

Line 3, taxes paid 400

Line 6, actual repairs made on building, or
amount allowed for wear and tear 150

Line 7, dividends not subject to normal tax. . 2,000

Line 8, amount of income on which normal tax has been deducted and withheld at source, bonds with "tax-free clause" 2,000

Total deductions \$5,000

Page 1. Line 1, gross income \$9,000

Line 2, total deductions 5,000

Line 3, amount of income due beneficiary,

which is subject to normal tax 4,000

"The beneficiary has filed with the fiduciary as a withholding agent a claim for exemption under paragraph C for \$2,500 (ex-

■§ 80] EETUENS BY FIDUCIARY AGENTS. 315

emption of a single person for 1913), and the return on Form 1041 would show on page 1, in addition to the foregoing entries, the following :

" 'John Doe, 76 B Street, New York City,'

In third column, amount of income paid or accrued to

beneficiary \$4,000

In fourth column, amount of exemption claimed. . . . 2,500

In fifth column, amount of income on which fiduciary

liable to tax 1,500

In sixth column, amount of normal tax withheld. . . . 15'

"In the foregoing illustration, the beneficiary in his return on Form 1040, would make no return of item 1, interest on United States bonds. Item 2, dividends, would be entered on page 2, line 11, and for the purpose of calculating the normal tax would be an allowable deduction on page 1, line 4. Item 3, interest on bonds, would be entered on page 2, line 7, column A, and for the purpose of calculating the normal tax would be an allowable deduction on page 1, line 5. Item 4, rents, would be entered on page 2, line 7; \$1,500 in column A and \$2,500 in column B (exemption of \$2,500 claimed and no tax withheld on this amount). This would show -

Income received from fiduciary subject to be returned

on Form 1040 \$8,000

Deductions and exemption allowable in calculating

normal tax 8,000

0,000

"No normal tax due, it having been paid at the source by the fiduciary as shown by his return on Form 1041.

"In making the foregoing entry on Form 1040 on line 11, there should be written just above the printed heading, "Amount received from fiduciary," and the amount should be entered in the appropriate column.

"The illustration is given of income accruing to the beneficiary from other sources, an illustration of this not being deemed

necessary as such income is entered in the usual way." '

9 T. D. 1943.

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To be Filled In by
Collector.

Form 1041 (Revised.)

To be Filled In by Internal
Revenue Bureau.

Assessment List 23-B

(Month.)

Folio Line

INCOME TAX.

File No

Examined by .

Above space to be stamped
by Collector, showing
district and date re-
ceived.

The Penalty

For failure to have this Return in the hands of the Collector of Internal Revenue on or before March 1 Is \$20 to \$1,000.

Audited by

(See

instructions on page 4.)

IMPORTANT.

Read this form through carefully. Fill in page 2 before making entries on first page.

United States Internal Revenue.

RETURN OF ANNUAL NET INCOME BY FIDUCIARIES.

(As provided by Act of Congress, approved October 3, 1913.)

Income received or accrued during: the year ended December 31, 191..

Filed by of

(Name of fiduciary.) (Street & number.) (Post-office address.) (State.)

Acting in capacity of , for the beneficiaries of the

(State whether trustee, executor, etc.)

estate or trust of .

(State name by which estate or trust is known.)

Answer must be given to the following question:

Are any of the beneficiaries minors, incompetents, persons under any legal incapacity, or nonresident aliens? ____'

Note.— If there are any such beneficiaries they should be designated on the list below.

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1. Gross Income (brought from line 15)

2. General Deductions (brought from line 23)

3. Net Income

4. Income on which normal tax has been paid or is to be
paid at original source (brought from line 14)

5. Amount of income accrued to beneficiaries to the estate
or trust as listed in column 3 below, whether dis-
tributed or not, and upon which the fiduciary is
liable for the normal tax when the amount is in
excess of \$3.000 |\$.

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EETUKNS BY FIDUCIAEY AGENTS.

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(1)

(2)

(3)

(4)

(5)

(6)

Name of
beneficiaries.

Addresses.

beneficiaries' In-
terest in amount
reported on line
5, whether dis-
tributed or not.

■Sa

Amount of
income on which
trustee is
liable (or tax.

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Totals

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NOTES.

1. The total of column 3 shall equal the amount entered on line 5 above.
2. Entries made in column 4 representing claims for exemption will not be allowed unless properly executed certificate for each claim accompanies this return.
3. Enter in column 5 the difference between the entries in columns 3 and 4.
4. Enter in column 6 one per cent of the entries in column 5.
5. If sufficient space is not provided on this page to list all beneficiaries an additional sheet, similarly ruled, should be appended.
6. Fiduciaries shall withhold the normal tax of one per cent from each beneficiary whose income in column 3 above is in excess of \$3,000, subject, however, to the claim for specific exemption.

EETTJENS.

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GROSS INCOME.

This statement must show In the proper spaces the entire amount of gains,, profits, and Income received or accrued from all sources whatever coming Into the custody or control and management of the fiduciary for the benefit of the beneficiaries of the trust or estate during the year specified on page 1, except- ing dividends on stock of domestic corporations which are listed on page 3,. and excepting income derived from the obligations of the United States or any of its possessions or of any State or political subdivision thereof^ includ- ing district drainage bonds.

Description of Income.

A.

Income on which the tax has been paid or is to be paid at the source.

B.

Income on which tax has NOT been paid or is not to be paid at the source.

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Total Amount Derived from—

6. Business, trade, commerce, or
sales or dealings in property
whether real or personal

7 Rents

?..

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8. Interest on notes, mortgages,
bank deposits, and securities
other than reported on lines
9 and 11

9. Interest on bonds, mortgages, or deeds of trust or other similar obligations of domestic corporations, joint stock companies, or associations and insurance companies

10. Partnership gains and profits, whether distributed or not. {Net gains or profits must be reported here) - ^

U. Interest upon bonds Issued in foreign countries, and upon foreign mortgages or like obligations (not payable in the United States), and also dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies, engaged in business in foreign countries

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EETXJENS BY FIDUCIARY AGENTS.

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12. Boyalties from mines, oil

wells, patents, franchises,
or other legalized privileges

13. Other sources not enumerated

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Note.- State sources from
which received and amount
received from each:

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14. Totals (enter total of column A on line 4)

15. Gross Income (total of columns A and B to be entered on line 1)

GENEBAI/ DEDUCTIONS.

Note.- Claims for deductions can not be allowed unless the Information required below is clearly set forth.

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16. The amount of necessary expenses actually paid within the calendar year for which this return is made in the administration of the estate or trust. There must not be included under this head personal, living, or family expenses, business expenses of partnerships, or cost of merchandise. Amounts paid for permanent improvement or betterment of property are not proper expense de-

T

17. All interest paid within the year on indebtedness of estate or trust . -

18. All national. State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)

19. Losses actually sustained during the year incurred in trade or arising from fires, storm, or shipwreck, and not compensated by insurance or otherwise

Note.— State (a) of what the loss consisted, (b) when it was actually sustained, and (c) how it was determined to be a loss:

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20. Debts past due which have been actually ascertained to be worthless and which have been charged off within the year

Note.— State (a) of what the debts consisted, (b) when they were created, (c) when they became due, and (d) how they were actually determined to be worthless:

21. Amount representing a reasonable allowance for tTic
exhaustion^ wear and tear of property urisinr/ out
of iis use or employment in business. No deduction
shall be made for any amount of expense of re-
storing property or making good the exhaustion
thereof for which a deduction is claimed elsewhere

Note.- State (o) what the property was on which
depreciation is taken (If buildings, state when
erected, of what material constructed and value
of same, as of January 1, of the calendar year for
which this return is rendered) and (!)) what per-
centage of depreciation is claimed:

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22. Amount allowed to cover depletion In case of mines and oil wells, not to exceed 5 per cent of the gross value at the mine or well of the output for the calendar year for which this return is rendered

Note.— State (a) cost of mine or well, (6) gross value at the mine or well of the output for the calendar year for which this return is rendered, and (c) what percentage for depletion is claimed :

-

23. Total General Deductions (to be entered on line 2)

Note.— If space is insufficient for answering any questions, attach a supplemental sheet to this return.

The following statement shall be made by the fiduciary, giving the names of all beneficiaries and showing each beneficiary's interest In (o) the income of the estate as shown in line 5, (6) the Income of the estate on which the normal tax has been or is to be paid at source other than this fiduciary as shown on line 4, (c) any dividends of domestic corporations accrued to the fiduciary In the year for which this return is rendered, whether said Interest is distributed to beneficiaries or not, and (d) the total net income of the estate, including dividends.

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EETUENS BY FIDUCIAEY AGENTS.

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Note. - This statement will show the amount each beneficiary who is required to render a return should include in his personal return under the head of income received from fiduciaries.

A

B

C

D

Names of Beneficiaries.

Beneficiaries' Interest
in amount reported on
line 5, whether dis-
tributed or not.

Beneficiaries' interest
in amount entered on
line 4, whether dis-
tributed or not.

Beneficiaries' interest in
dividends of domestic
corporations accrued to
the estate, whether
distributed or not.

Beneficiaries' interest
in total net income
(including dividends)
of the estate.

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Totals

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NOTES.

1. Total of column A shall equal the total of column 3. page 1.
2. Total of column B shall equal amount entered on line 4.
3. Total of column C shall represent the amount of dividends of domestic corporations accrued to fiduciary in which beneficiaries have an interest, whether said interest is distributed or not.
4. Total of column D shall represent the total amount of Income accrued to the estate in the year for which this return is rendered, in which the beneficiaries have an interest, whether said interest is distributed or not.

AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN INDIVIDUAL,

I swear (or affirm) that I am the

(State whether trustee, executor, etc.)

for the beneficiaries of the estate or trust of ,

that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income received by or accrued to me or coming into my custody or control and management as such, during the year for which this return is made; that said beneficiaries are entitled, under the Federal Income Tax Law of October 3, 1913, to all the deductions entered or claimed therein; that all certificates claiming personal exemption, presented by the beneficiaries, are herewith inclosed ; and that there is contained therein a true and complete list of the names and addresses of all the beneficiaries to whom any part of this income accrued and a true and complete statement of the interest of each beneficiary in the income of the estate or trust, whether said income is distributed or not.

Sworn to and subscribed before me this day of .

191

[Seal]

(Signature of fiduciary.)

(Official capacity.)

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AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN ORGANIZATION.

I swear (or affirm) that I am the of the

(State official position.)

of which

(State name of fiduciary organization.) (Address in full.)

organization is the duly authorized or appointed

(State whether trustee, executor, etc.)

for the beneficiaries of the estate or trust of .. ;

that I am duly authorized to act for said fiduciary; that the foregoing return to the best of my knowledge and belief, contains a true and complete statement of all taxable gains, - profits, and Income received by or accrued to, or coming into the custody or control and management of said organization in its fiduciary capacity as stated during the year for which the return is made; that said beneficiaries are entitled under the Federal Income Tax Law of October 3, 1913, to all the deductions entered or claimed therein ; that all certificates claiming personal exemption presented by the beneficiaries are herewith inclosed, and that there is contained therein a true and complete list of the names and addresses of all the beneficiaries to whom any part of this income accrued and a true and complete statement of the interest of each beneficiary in the income of the estate or trust, whether said income is distributed or not.

Sworn to and subscribed before me this day of , 191

(Signature of officer representing fiduciary.)

[Seal]

(Official capacity.)

INSTRUCTIONS.

1. Fiduciaries, when the annual interest in any income accruing and payable to any beneficiary through said fiduciary is in excess of \$3,0(X), shall make and render a return on this form" of such income of the person or person for whom they act, to the Collector of Internal Revenue for the district in which the fiduciary resides on or before the 1st day of March succeeding the close of the calendar year for which this return is rendered.

2. This return shall be made by the trustee, etc., of every nonresident alien deriving any net income from any property or business located in the United States. No specific exemption is allowed nonresident aliens.

3. Where two or more individuals act jointly in a fiduciary capacity, this return, when required, may be made and executed by any one of the individuals so acting. When the fiduciary is an organization the return shall be executed by a duly authorized officer of the organization.

4. When the return is not filed within the required time by reason of sickness or absence of the fiduciary, an extension of time, not exceeding 30 days from March 1, within which to file such return may be granted by the Collector, provided a written application therefor is made by the fiduciary within the period for which such extension is desired.

5. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a justice of the peace or magistrate not using a seal, a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return.

6. A fiduciary acting in the capacity of guardian when there is but one ward shall render his return on Form 1040 as agent of the beneficiary and not on this form, but where there are two or more wards he shall render a return on Form 1041, and a personal return on Form 1040 for each ward. A fiduciary acting in the capacity of trustee, executor, or administrator, when there is only one beneficiary and that beneficiary a nonresident alien shall render a return on Form 1040, but when there are two or more beneficiaries and those beneficiaries are nonresident aliens, he shall render a return on Form 1041, and a personal return on Form 1040 for each such nonresident alien beneficiary.

7. Amounts charged on line 16 for restoring property, or making good the exhaustion thereof from its use in business, together with the amount claimed for depreciation (line 22), must not exceed the deterioration of the property during the year.

INSTRUCTIONS ANNEXED TO ORIGINAL FORM 1041.

1. Fiduciaries shall, when the annual interest of any beneficiary in income accruing and payable through said fiduciary is in excess of \$3,000, make and render a return on this form of such income of the person or persons for whom they act, to the Collector of Internal Revenue of the district in which the fiduciary resides. The return shall be made as provided herein, whether the income is distributed or not. See Treasury Decision 1906.

2. The list return required from fiduciaries by regulations provided, in Treasury Decision 1906, issued November 28, 1913, shall be made on page 1 of this return, giving thereon the name of each beneficiary of the trust or estate, the amount of income paid or accrued to each beneficiary, the amount of exemption claimed by each beneficiary, if any, the amount of income on which fiduciary is liable for tax, and the amount of income withheld for tax.

3. Where several individuals act jointly in a fiduciary capacity, when this return is required it may be made and executed by one of two or more. When the fiduciary is an organization it shall be signed and executed by the President, Secretary, or Treasurer of said organization. ,

4. This return shall be filed with the Collector of Internal Revenue for the district in which the fiduciary resides if he has no other place of business, otherwise in the district in which he has his principle place of business.

5. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.

6. The penalty for failure to file the return within the time specified by law is \$20 to \$1,000. In case of refusal or neglect to render the return within the required time (except in case of sickness or absence) 50 per cent shall be added to amount of tax assessed. In case of false or fraudulent return 100 per cent shall be added to such tax and a fine not exceeding \$2,000 or imprisonment not exceeding one year or both may be imposed.

7. When the return is not filed within the required time by reason of sickness or absence of the fiduciary, an extension of time not exceeding 30 days from March 1, within which to file such return may be granted by the Collector, provided an application therefor is made by the fiduciary within the period for which such extension is desired.

8. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a justice of the peace or magistrate, not using

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a seal, a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return.

The following instructions, so far as applicable, are to be considered by the fiduciary in determining the amount of income coming into his custody or control and management which should be reported in this return on page 2, and the deductions which should be reported on page 3.

9. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income. In case an individual owns his own residence he can not deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.

10. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.

When animals are raised by the owner and are sold or slaughtered, he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.

11. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return, can be deducted.

12. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which the return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.

13. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts due to the taxpayer and contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall subsequently prove to be worthless, they may be deducted un-

80] RETTJENS BY FIDUCIARY AGENTS.

der the head of losses in the return for the year in which such debts were charged off as worthless.

14. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.

15. United States pensions shall be included as income.

16. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.

17. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

18. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of \$3,000. When husband and wife live together they shall be allowed jointly a total exemption of only \$4,000 on their aggregate income.

19. In computing net income there should be excluded the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

Foster Income Tax - 13.

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§ 81. Contents of returns of income payable at the source. The act provides : that "all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown." *

The act further provides: "In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax

unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300 ; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf

§ 81. 1Act of Oct. 3, 1913, D.

§ 81] CONTENTS OF EETUKNS PAYABLE AT SOUBCE. 327

by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him : Provided further. That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete." ^

According to the Treasury Regulations:

"N"or shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B (see art. 6, 1 to 6) unless he shall, not less than 30 days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return (on Form 1008) of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax and the debtor or withholding agent will only withhold the tax on the payments made in excess of the deductions claimed on said form. Or such person may likewise make application for deductions to the collector of the district in which return is made or to be made for him.

"If such person is a minor or an insane person, or is absent

from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath on certificate (Form 1009) under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete." *

*Jbid. E. STR. Reg. 33 (6).

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RETURNS.

[§ 81

FORM 1008.
UNITED STATES INTERNAL REVENUE.

FORM OF RETURN FOR MAKING APPLICATION FOR DEDUCTIONS,

As provided by Paragraphs B and E, Section 2 of the Federal Income-Tax Law of October 3, 1913.

To

(Name of withholding agent)

(Street and number)

(Town or city)

(State)

I hereby solemnly declare that the following is a true and correct return of my gains, profits, and income from all other sources for the calendar year ended December 31, 191 (for the year 1913 the period to be covered is only for ten months, from March 1 to December 31), and a true and correct return of deductions asked for under paragraph B of section 2 of the act of October 3, 1913, and I hereby claim deductions as shown below.

Amount of gains, profits, interest, rents, royalties, profits from copartnerships, and income from all other sources whatsoever

DEDUCTIONS

The amount of necessary expenses actually paid in carrying on business, except business expenses of partnerships, and not including personal, living, or family expenses

2. All interest paid within the year on personal indebtedness of taxpayer

All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)

Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise

\$.

§ 81] CONTENTS OF EETUBNS PAYABLE AT SOTJEOE.

5. Debts due which have been actually ascertained to be worthless and charged off within the year

6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed in the case of mines 5 per cent of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made

The amount received as dividends upon the stock of from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income . . .

8. The amount of income, the tax upon which has been paid or withheld for payment at the source of income

Total deductions

(Signed)

Date:

., 191

Address

Note. — Money or other things of value, disposed of by gift, donation, or endowment, shall not be deducted or be made the basis for a deduction from the Income of persons or corporations in their tax returns under the income-tax law.

"Any such person, firm, or organization other than the debtor who has withheld said tax, shall file with the collector of inter-

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nal revenue for his, her, or its district, a certificate (Form 1006) showing from whom and in what amount the tax has been so withheld.

FORM 1006.

Form of Certificate to be filed by persons, firms, or organizations required to withhold and pay said tax other than the Debtor at the source.

To : , Collector of Internal Revenue,

(Name of collector of internal revenue.)

(Give address and designate district.)

I.

(Name.) (Official title, if any.)

of the .• ,

(Person, firm, or organization.) (Capacity in which acting.)

of , do solemnly declare that I (we)

(Post-office address.)

received of \$, same being

(Name from whom received.)

income derived from

(State source, whether rents, salary, or other sources.)

belonging to ,

(Give name of person to whom income is due.) (Address.)

and that the tax thereon amounting to \$, to which said person
is subject, has been withheld at the source of said income by

(Name of person withholding.) (Post-office address.)

(Signed)

Address

(Street and number.)

(City and State.)

Date: , 191...

FORM 1009.

Form of oath required of a withholding agent when acting for another in
filing return and making application for deductions allowable under
paragraph B, as provided in paragraph E, section 2, of the Federal
income-tax law of October 5, 1913.

I hereby swear (or affirm) that I have sufficient knowledge of the affairs
and property of to enable me to

(Naming person and address for whom acting.)

make a full and complete return for , and that the return

(Naming person.)

of income and application for deductions made by me are true and accurate.

(Signed)

Address

(Street and number.)

(City and State.)

Date: , 191-.

Signed and sworn to before , 191 - .

§ 81] CONTENTS OF E33TUENS PAYABLE AT SOURCE. 331

"When, however, claims for exemption and deductions as above described are not filed -within the prescribed time, the tax collected in excess can be remitted only on presentation of a claim for refund under the provisions of section 3220, E«-vised Statutes, said claims to be made either by the withhold- ing agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.

"Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof, be filed under the provisions of said section 3220, Revised Stat- utes, (TJ. S. Comp. Stat. 1901, 2086,) either by the withholding agent against whom the assessment was made, or by the persons on account of whom such taxes were withheld.

"In the monthly list returns as now prescribed a space is provided to show the amount of taxes which the withholding agent may remit to the collector when such returns are filed. The withholding agents will not, however, forward to the col- lector amounts withheld by him until notices of assessment are received from the collector.

"Claims for exemption and deductions may be filed with the withholding agent and claims for deductions may be filed with the collector, not later than 50 days prior to March 1.

"In cases where claims for deductions are filed with the col- lector within the time prescribed, the collector will immediately furnish the withholding agent (whose name and address must be shown on Form 1008) with a statement of the amount of deductions claimed, and said withholding agent shall not with- hold and pay the normal tax to the extent of the deductions claimed as per said list.

"Withholding agents should not file their annual returns until after the expiration of the time allowed persons to file claims for exemptions and deductions and if claims for deduc- tions are filed with the collector in the required time, yet not in sufficient time to have the adjustment made by the with- holding agent, the collector will make the adjustment on the withholding agent's return and in reporting such withholding agent for assessment will make allowance for the amount of such deductions claimed. Notice of such adjustment, however, must be furnished the withholding agent.*

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"The normal tax of 1 per cent shall be deducted and withheld at the source, and payment made to the collector of internal revenue as provided in the law, by the debtor, or his, her, or its duly appointed agent authorized to make such deduction and payment.

"No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of 1 per cent thereon, provided that any such person, firm, or organization other than the debtor who has withheld said tax, shall file with the collector of internal revenue for his, her, or its district, a certificate (Form 100) showing from whom and in what amount the tax has been withheld." *

The Treasury Regulations further provide:

"Withholding agents are required to file in duplicate a monthly list return (Form 1012) giving a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld from interest payments made upon bonds or other similar obligations, and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld.

"Forms 1012a, 1012b, and 1012c, are to be used where Form 1012 does not afford sufficient space in which to enter all items.

"Form 1012d, when necessary to be used, shall be made in duplicate and shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent, and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same as fully as if each list attached to the summary was signed and sworn to separately.

"An annual list return (Form 1013) in duplicate is also required to be made by debtors or withholding agents of the normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations, and it shall be filed, on or before March 1 of each calendar year." *

5Tr. Reg. 34. STr. Reg. 50.

§ 81] CONTENTS OF EETUENS PAYABLE AT SOUECE.

FORM 1012.
UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX
WITHHELD AT THE SOURCE.

Filed by

(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we) , of , the

(Name.) (State address in full.)

duly authorized withholding agent of ,

(State name of debtor organization.)

located at , do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month

of ,191 , on the

(Describe the particular issue of bonds.)

Bonds (or other similar obligations) of the ,

(Name of debtor organization.)

and there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest -maturing on \$, of the bonds described.

Name.

Address in full.

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Name.

Address in full.

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Amount of
Exemption
Claimed.

Amount of Income
on Which With-
holding Agent Is
Liable for Tax.

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\$

\$

Totals for month

\$

\$

\$

\$

Amount of ta

X remitted herewit

h (if any

) to Colle

etor

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\$

To

Collector.
District of .

Sworn to and subscribed ~

before me this

day of ,191

(Address.)

Signed :

(Capacity in which
acting.)

Note A. - Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B. All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

I 81] CONTENTS OF KETUENS PAYABLE AT SOUKCE.

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FORM 1012A.
UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX
WITHHELD AT THE SOURCE.

Filed by

(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the

District in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we) , of

(Name.)

(State address in f ull.)

the

duly authorized withholding agent of ,

(State name of debtor organization.)

located at do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the mcnth

of ,191 , on the

(Describe the particular issue of bonds.)

Bonds (or other similar obligations) of the ,

(Name of debtor organization.)

and tliere are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on \$, of the bonds described.

Name.

Address in full.

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Name.

Address in full.

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Amount of
Exemption
Claimed.

Amount of Income
on Which With-
holding Agent Is
Liable for Tax.

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\$

\$

\$

\$

Totals carried forward

§ 81] CONTENTS OF EETUENS PAYABLE AT SOUECE.

337

FORM 1012B.
UNITED STATES INTERNAL REVENUE.

Name.

Address in full.

1

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1

Amount of
Exemption
Claimed.

Amount of Income
on Which With-
holding Agent Is
Liable for Tax.

1

1^

Totals brought
forward

\$

\$

\$

\$

Totals carried forward

Foster Income Tax.- 22.

\$

\$

\$

\$

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FORM 1012C.
UNITED STATES INTERNAL REVENUE.

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Tax.

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Name.

Address in full.

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Totals brought

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Totals carried forward

\$

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Amount of ta

X remitted herewit

Ii (if any)

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tor

\$

To Sworn to and subscribed "

Collector.

before me this

District of

day of ,191

(Address.)

Signed:

(Capacity in which
acting.)

Note A. - Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B. - All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

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FORM 10iaD.
UNITED STATES INTERNAL REVENUE.

SUMMARY OF MONTHLY LIST RETURN OF AMOUNT OF NORMAL
INCOME TAX WITHHELD AT THE SOURCE.

Filed by 1

(Name of debtor organization.)
To be made in duplicate to the Collector of Internal Revenue for the

District in which the withholding agent is located, on or before the 20th day of each month, showing the name and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we) , of , the

(Name.) (State address in full.)

duly authorized withholding agent of ,

(State name of debtor organization.)

located at , do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month

of , 191 . . on bonds (or other similar obligations)

of the , as fully set forth in detail, on

(Name of debtor organization.)

lists attached hereto, said lists, Form 1012, and this Summary, constituting the Monthly List Return of Normal Income Tax Withheld at THE SOURCE as required by the regulations; and that there are herewith inclosed all certificates of ownership which were presented with said coupons' or orders for registered interest covering the interest maturing on

\$ of the bonds described, and that said withholding agent

has paid no coupons or orders for registered interest not accompanied by the certificates of ownership as required by Treasury Regulations.

Description of Obligation.

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[§ 81

Description of Obligation.

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Totals for month

\$

\$

\$

\$

Amount of tax remitted herewith (if any) to Collector \$

To

Collector.
District of

Sworn to and subscribed

before me this

day of , 191..

(Address.

Signed:

(Capacity in which
acting.)

Note A. - Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B. - All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents, will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

"The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required, in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

"All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds. Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent when the owners of the bonds are not subject to having the normal tax withheld at the source, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for the district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received,"

»Tr. R[^]. 51.

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EETUENS.

(Form 1013.)

[§ 81

United States Internal Revenue. — Annual list return of amount of normal income tax withheld at the source. From interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, joint-stock companies, or associations, and insurance companies.

Filed by

(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before March 1, showing the totals of each monthly return on Form 1012 and their aggregate totals for the preceding calendar year.

I (we) of

(Name.) (State address in full.)

the duly authorized withholding agent of

(State name of debtor organization.)

located at

(State address in full.)

do solemnly swear (or affirm) that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization or for which it is liable as withholding agent as reported on Form 1012 and their aggregate totals for the year ended December 31, 191 ^

Month

Amount

of
income

Amount
of ex-
emption
claimed

Amount

of
income

on which

with-
holding
agent is

liable
for tax

Amount
of tax
withheld

Amount
of tax
remitted
to
collector

Balance
of tax
due

January
February-
March . .

\$. .

\$. .

April
May

June

July

August . .
September
October . .

November
December

Aggregate total
for year

To

(Collector.)
district of .

Sworn to and subscribed
before me this
day of 191-...

Signed:

(Address.)

leity in which acting.)

§ 81] CONTENTS OF EETUENS PAYABLE AT SOUECE. 343

"Withholding agents who are required to make monthly returns will, on or before the 20th day of each month, file with the collector for their respective districts such returns for the preceding month, accompanied by all certificates relating thereto, and there shall also accompany said returns all certificates claiming exemptions and deductions which are not required to be listed thereon ; and on or before the 1st day of March in each year said withholding agents shall likewise file their annual returns for the preceding calendar year. Annual returns (Forms 1041 and 1042) must be accompanied by all certificates claiming exemptions and deductions relating thereto." *

Although the forms for the monthly list returns contain

jurats, the Treasury Department has waived the requirement of an oath, since they are parts of the annual list return which must be verified and the jurat thereto covers them also.'

"Withholding agents shall make an annual list return (Form 1042), in duplicate, to the collector of internal revenue for the district in which the withholding agent resides or has his principal place of business on or before the 1st day of March in each year, showing the names and addresses of persons who have received incomes in excess of \$3,000, on which the normal tax of 1 per cent has been deducted and withheld during the preceding year. This return must be accompanied by all forms presented claiming exemptions and deductions." "

»Tr. Eeg. 35. "Tr. Reg. 69.

9 T. D. 1997.

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EETUENS.

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FORM 1042.
UNITED STATES INTERNAL REVENUE.

ANNUAL LIST RETURN OF AMOUNT OF NORMAL INCOME TAX
WITHHELD AT THE SOURCE

on salaries, wages, rent. Interest, or other fixed and determinable annual gains, profits, and income Exceeding \$3,000 for the taxable year.

The income to be made the subject of this return does not include dividends on capital stock or net earnings of corporations, joint-stock companies, etc., subject to like tax or income derived from interest upon bonds or mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies, etc., or from interest upon bonds, mortgages, or dividends of foreign corporations.

Filed by for the year 191

(Name of debtor or withholding agent.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the debtor or his duly appointed withholding agent, as the case may be, is located, on or before the first day of March, showing the names and addresses of persons who have received salaries, wages,

rent, etc., as above described, in excess of \$3,000, on which the normal tax of 1 per cent has been deducted and withheld during the preceding calendar year.

I (we) , of

(Name.) (Address in full.)

the

of

(State official title.)

(Debtor or withholding agent.)

located at do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of all salaries, wages, rent, and other fixed and determinable annual gains, profits, and income in excess of \$3,000 as above described, which were paid (or were payable) to each of the persons listed herein, and on which the normal tax of 1 per cent was deducted and withheld during the year stated, and there are herewith inclosed all certificates claiming exemptions and deductions with respect to said income.

Name.

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§ 81] CONTENTS OF EETUENS PAYABLE AT SOUECE.

345

Name.

Address in
full.

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Totals for calendar year

\$

\$

\$

\$

Amount

of tax remitt

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ctor

\$

To

Collector.
District of

Sworn to and subscribed ^

before me this

day of ,191

(Address.)

Signed:

(Capacity in which
acting.)

Note A. - ^Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the year for which the list is made.

"Withholding agents receiving coupons or interest orders not accompanied by certificates of owners are required to file monthly and annual list returns in duplicate.

"The required monthly list return (Form 1044) shall give a list of all coupon or interest payments made on which the normal tax of 1 per cent, was deducted and withheld and shall show the name and address in full of the owner of, or the person presenting such coupons or interest orders, if the owner is not known, amount of the income subject to tax and the amount of tax withheld.

"An annual list return (Form 1044a) is also required to be made by such withholding agents, showing the amount of tax withheld during the preceding year on income of this character. This return must be filed on or before the 1st day of March of each calendar year.

"The monthly list returns in the form as required herein shall constitute a part of the annual list return to be made, and the withholding agent will not be required, in making an annual list return of the tax thus withheld, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list returns for the year for which annual list return is made." ^'

" Tr. Reg. 53.

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(EEVISED FORM 1044.)

UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OF NORMAL INCOME TAX
WITHHELD BY FIRST BANK OR COLLECTING AGENCY

Receiving Coupons and Interest Orders Not Accompanied by Certificates
of Owners.

Filed by :

(Name of bank or collecting agency.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the collecting agency is located, on or before the 20th day of each month showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust,

or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month, the coupons for said payments having been presented without certificates of owners.

I (we) , of the

(Name.) (State address in full.)

• ■ ■ of , located at

(Official position.) (Name of bank or collecting agency.)

do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of all coupon and interest orders purchased or accepted for collection as above described during the

month of , 191 . . , and the said bank or collecting

agency, having acknowledged its responsibility of withholding therefrom the normal tax of 1 per cent, has deducted and withheld the tax as listed below, in accordance with the regulations of the Treasury Department.

Party presenting coupons.

Name.

Address.

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Totals for month

To

Collector.
District of

Sworn to and subscribed "

before me this

day of ,191..,

(Address.)

Signed :

(Capacity in which
acting.)

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EETUEKS.

[S 81

FORM 1044A.
UNITED STATES INTERNAL REVENUE.

ANNUAL LIST RETURN

of amount of normal income tax withheld by first bank or collecting agency from payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies where coupon and interest orders were not accompanied by certificates of owners.

Filed by

(Name of bank or collecting agency.)

(This return is to be made in duplicate to the Collector of Internal Revenue for the district in which the bank or collecting agency is located on or before March 1, showing the totals of each monthly return on Form 1044 and their aggregate totals, for the preceding calendar year.)

I (we) , of , , the

(Name.) (State address in full.)

of the above-named bank or collecting agency,

(Official position.)

located at do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organizations, or for which it is liable as withholding agent, as reported on Form 1044, and their aggregate totals for the year 191 ; and the Monthly List Returns, Form 1044, the totals of which are listed below, constitute a part of this return.

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January
February

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April
May

July
August

§ 81]

CONTENTS OF EETUENS PAYABLE AT SOUECE.

349

To

Collector.
District of

Sworn to and subscribed ^ Signed :

before me this

day of ,191

(Address.)

(Capacity in which
acting.)

Concerning returns by licensees who collect foreign income,
the regulations provide:

"Such licensee shall obtain the names and addresses of the persons from whom such items are received and shall prepare a list of same in duplicate (on Form 1043) and file it with the collector of internal revenue for his district not later than the 20th day of the month next succeeding the month in which such items were paid. The list shall be dated, and shall contain the names and addresses of the taxable persons, the character and amount of income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld. In addition to the monthly lists the licensee will, on or before the 1st day of March in each year, file with the collector in duplicate a return (Form 1043a), showing the amount of income paid and the amount of tax withheld

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by him during the preceding year and such other information as the form prescribes.

"The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by the licensee as withholding agent, and he will not be required, in making an annual list return of the tax withheld from income described in article 54, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made." **

(FORM 1043.)
UNITED STATES INTERNAL REVENUE.

MONTHLY LIST RETURN OF AMOUNT OP NORMAL INCOME TAX
WITHHELD ON FOREIGN INCOME

By Licensed Banks or Collecting Agencies.

Filed by License No

(Name of bank or collecting agency.)
To be made in duplicate to the Collector of Internal Revenue for the District in which the licensee is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments from coupons, checks, or bills of exchange representing interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations (not payable in the United States), or dividends upon the stock or interest upon the obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, on which the normal tax of 1 per cent, has been deducted and withheld during the preceding month.

I (we) , of , th<'

(Name.) (State address in full.)

of the above-named bank or colleetaij;

(Official position.)

agency located at do solemnly swear (or

(Address in full.)

affirm) that the following is a true and complete return of all payments

as above described, made by said bank or collecting agency, and from which the normal tax of 1 per cent, was deducted and withheld at the time of

12 Tr. Reg. 59.

§ 81] CONTENTS OF EETUENS PAYABLE AT SOUBOE. 351

payment, or for which it is liable as withholding agent, during the month of , 191. ., and there are herewith inclosed all certificates claiming exemption which were presented with said coupons, checks, etc.

Name,

Address in full.

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Name.

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II

Totals for month

Amount of tax remitted herewith (if any) to Collector

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To Sworn to and subscribed'

{Collector.}

before me this

District of

day of , 191...

(Address.)

Signed :

(Capacity in which
acting.)

Note A. - Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B. - All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Note C. - Enter "Int. on Bonds," "Int. on Mortg.," "Dividends," etc., as

the case may be.

FORM 1043A.
UNITED STATES INTERNAL REVENUE.

License No.

ANNUAL LIST RETURN OF AMOUNT OF NORMAL INCOME TAX
WITHHELD ON FOREIGN INCOME BY LICENSED BANKS OR
COLLECTING AGENCIES.

Filed by , , for the year 191

(Name of bank or collecting agency.)
(To be made in duplicate to the Collector of Internal Revenue for the
district in which the withholding agent is located, on or before March 1,
showing the totals of each monthly return on Form 1043, and their aggre-
gate totals for the preceding calendar year.)

I (we) , of the

(Name.) (State address in full.)

of the above-named bank or collecting

(Official position.)

agency, located at , do solemnly swear (or affirm)

(Address in full.)

that the following is a true and complete return of the monthly totals of
all payments made representing interest upon bonds issued in foreign coun-
tries and upon foreign mortgages or like obligations (not payable in the
United States), or dividends upon the stock or interest upon the obliga-
tions of foreign corporations, associations, or insurance companies
engaged in business in foreign countries, and normal taxes withheld
therefrom by said organization, or for which it is liable as withholding
agent, as reported on Form 1043, and their aggregate totals for the year
stated above; and the Monthly List Returns, Form 1043, the totals of which
are listed below, constitute a part of this return.

§ 81] CONTEJSTTS OF RETURNS PAYABLE AT SOURCE.

Month.

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Amount of
Exemption
Claimed.

Amount of Income
on Which With-
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Liable for Tax.

Amount of Tax
Withheld.

Amount of Tax
Remitted to
Collector.

Balance of Tax
Due.

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May

June

Month.

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Amount of
Exemption
Claimed.

Amount of Income
on Which With-
holding Agent Is
Liable for Tax.

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Amount of Tax
Remitted to
Collector.

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October

November

Aggregate totals
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income tax

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§ 82. Contents of returns by corporation, joint-stock company, or association. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the man-

ner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance compauy, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign

§ 82] CONTENTS OF EETURNS BY CORPOBATIOIT. 355

country the amount so paid in the maintenance and operation of its business within the United States; (fifthj the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made withiu" the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of preuiiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any

year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:

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Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves : Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts betweeen the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year ; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposit; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capitru stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invest-

ed -within the United States bears to the gross amount of its income derived from all sources within and without the United States ; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized." ^

The Regulations of the Treasury Department provide :

"Every corporation not specifically enumerated as exempt shall make the return of annual net income required by law whether or not it may have any income liable to tax, or whether or not it shall be subordinate to or controlled by another corporation. Mutual telephone companies, mutual insurance companies, and like organizations, although local in character, and whose income consists largely from assessments, dues, and fees paid by members, do not come within the class of corporations specifically enumerated as exempt. Their status under the law is not dependent upon whether they are or are not organized for profit. Not coming within the statutory exemption, all organizations of this character will be required to make returns of annual net income, and pay any income tax thereby shown to be due. For this purpose the surplus of receipts of the year over expenses will constitute the net income upon which the tax will be assessed.

"A railroad or other corporation which has leased its properties in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee directly to the stock and bondholders, should, nevertheless, make a return of annual net income showing the rental so paid as having been received by the corporation." *

"A railroad company operating leased or purchased lines shall include all receipts derived therefrom, and, if bonded indebtedness of such lines has been assumed, such operating com-

§ 82. lAct of Oct. 3, 1913, II, S Tr. Eeg. 80.
subsection G (c).

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pany may deduct the interest paid thereon to an amount not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year." *

"Corporations operating leased lines should not include th&

capital stock of the lessor corporations in their own statement of capital stock outstanding at the close of the year. The indebtedness of such lessor corporations should not be included in the statement of the indebtedness of the lessee unless the lessee has assumed the same. Each leased or subsidiary company will make its own separate return, accounting for therein all income which it may have received by way of dividends, rentals, interest, or from any other source." *

"A foreign corporation having several branch offices in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return." *

"A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) during which it was engaged in business or had an income accruing to it." °

"Corporations going into liquidation during any tax period may, at the time of such liquidation, prepare a 'final return' covering the income received or accrued to them during the fractional part of the year during which they were engaged in business, and immediately file the same with the collector of the district in which the corporations have their principal places of business." ''

"For the purpose of this tax, corporations are divided into five classes, as follows :

"Class A. Financial and commercial, including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

"Class B. Public service, such as railroad, steamboat, ferry-

3Tr. Eeg. 81. 6 Tr. Reg. 84.

*Tr. Reg. 82. ' Tr. Eeg. 85.

6Tr. Reg. 83.

§ 82] CONTENTS OF EETUENS BY COKPOUATION. S5&

boat, and stage-line companies ; street-railway companies ; pipeline, gas-light, and electric-light companies ; express companies, telegraph and telephone companies.

"Class C. Industrial and manufacturing, such as mining, oil and gas producing companies, lumber and coke companies ; rolling mills ; foundry and machine shops ; sawmills ; flour, woolen, cotton, and other mills ; manufacturers of cars, automobiles, elevators, agricultural implements, etc. ; manufacturers or refiners of sugar, molasses, sirups, or other products ; ice and re-

frigerating companies; slaughterhouse, tannery, packing, or canning companies ; printing and publishing companies, etc.

"Class D. Mercantile, including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

"Class E. Miscellaneous, such as architects, contractors, hotel, theater, or other companies or associations not otherwise classified." ' "

"Under the authority conferred by this act, forms of return have been prescribed, in which the various items specified in the law are to be stated. Blank forms of this return will be forwarded to collectors and should be furnished to every corporation, not expressly exempted, on or before January 1 of each year, in the case of corporations making their returns for the calendar year, or on or before the first day of the next fiscal year in the case of corporations making returns for their fiscal year. Failure on the part of any corporation, joint-stock company, association, or insurance company liable to this tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Corporations not supplied with the proper forms for making the return should make application therefor to the collector of internal revenue in whose district is located its principal place of business in ample time to have its return prepared, verified, and filed with the collector on or before the last due date as hereinafter defined. Failure in this respect subjects it not

8Tr. Eeg. 162.

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only to 50 per cent additional tax, but to the specific penalty imposed for delinquency. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law." *

"In order that certain classes of corporations may arrive at their correct income, it is necessary that an inventory, or its equivalent, of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year shall be made in order to determine the gross income or to determine the expense of operation.

"A physical inventory is at all times preferred, but where a physical inventory is impossible and an equivalent inventory is equally accurate, the latter will be acceptable.

"An equivalent inventory is an inventory of materials, supplies, and merchandise on hand taken from the books of the corporation." "

"The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should be formed upon the assumed life of the property, its cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years." "

"The depreciation allowance, to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and should be so entered on the books as to constitute a liability against the assets of the com-

«Tr. Reg. 16.3. "Tr. Reg. 129. See § 64, supra.

10 Tr. Epg. 161.

§ 82] CONTENTS OF RETURNS BY COOPERATION. 361

pany, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost." ^

The instructions for the form of returns for corporations provide :

"13. The amount claimed under Item No. 5 (h) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under item 5 (a) of the return.

"14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the gen-

eral expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property."

Mr. Walker thus comments upon these instructions : "There is a difference of general application between those Instructions 13 and 14, and the statute which they purport to represent. That difference consists in the fact that those Instructions inform every tax paying corporation that its deduction on account of depreciation of property, includes depreciation on

12 Tr. Eeg. 130.

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account of 'obsolescence' of buildings, machinery, and any other property. There is no foundation in the statute for any such deduction. It is a case of attempted law-making by the Commissioner of Internal Revenue, and is apt to be availed of to defraud the Government, by means of deductions based on fictitious 'obsolescence' of property, which will recover from that disease very soon after March 1 of each year. The approach of the vernal equinox, and the ascension of sap in the trees, will be likely to cure many cases of 'obsolescence' in machinery every Spring." *'

"No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account." "

"The books of a corporation are assumed to reflect the facts as to its earnings, income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation." "

13 The unconstitutional character 1*Tr. Reg. 182. and the illegal administration of 16 Tr. Reg. 183.' the Income Tax Law, demonstrated by Albert H. Walker, 71. See also Jhid. 80.

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CONTENTS OF BETUEXS BY COEPOEATION,

362a

To Be FlUed In by In-
ternal Revenue Bureau.

Examined by

Audited by

Recorded by

I'orm 1030 (Revised),

INCOME TAX.

The Penalty

For failure to have this
return in the hands of
the Collector of Internal
Revenue within the time
required by law is not
more than \$10,000 and the
assessment is increased
fifty per cent.

To Be Filled In by
Collector.

List No. Class -

Assessment List 23-A

, 191-

(Month.)
Page Line

IMPORTANT.

Read this form and
all instructions care-
fully and fill in sup-
plementary statement
before making entries
in return proper.

Above space to be Return of Annual Net Income.

stamped by Collector. , , ^ , ^ " " ^ . " ,

showing district and ISectloh 2, Act of October 3, 1913.)
date filed.

INSURANCE COMPANIES.

RETURN OF NET INCOME for the | "j^fIsc" } y*"^" ended , 191

by , -

(Name of company.) (State whether life, Are, accident, etc.)

and located at , ,

(Street and number.) (City or town.) (State.)

(The address given must be that of the principal place of business of the
company.)

If no figures are to be extended opposite any item in the return, the word
"None" should be inserted.

Total amount of paid-up capital stock outstanding at the close
of the year, or the capital employed in the business

Total amount of bonded and other indebtedness outstanding at
the close of the year exclusive of indebtedness wholly secured
b.y collateral the subject of sale in the ordinary business of
the company -

3. Gross Income:

Dollars. | t

Deductions.

4. (a) Expenses, general

Dollars.

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(a) From premiums -

f

^ -

(b) Rentals • _

(c) From interest -

5. (a) Losses (other than

ceived

(b) Depreciation

(c) Payments on policies

(d) Net addition to re-
serve fund

(e) Mutual marine pre-
miums repaid with
interest .

6. Interest actually paid ...

f

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Total gross income

7. (a) Taxes, Federal and
State

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Total Deductions

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...

8. Net Income -

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We, officers of the above-named company whose return of net income is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in the supplementary statement, and in any additional list or lists attached to or accompanying this return are, to his best knowledge and belief, and from such information as he has been able to obtain, true and correct in each and every particular.

Sworn

Seal of officer

taking

affidavit.

this day of , 191

President.

Treasurer.

(Official capacity.)

GENHBAL, INSTRUCTIONS.

Returns on this form should be rendered in conformity with reports of same year made to the State Insurance Department, and a list of the States in which the company does business should be attached hereto.

Time of filing • returns.— Returns made on the basis of a calendar year must be filed with the Collector of Internal Revenue of the district in which is located the principal place of business of the company, on or before March 1; if made on the basis of a FISCAL YEAR • they must be filed within 60 days after the close of such year.

Principal place of business.— As used in the income tax law, the principal place of business is the place or office in which are kept the books of account, papers, and other data from which the return is prepared.

• Fiscal year.— Companies desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year must, not less than 60 days prior to March 1, file with the collector a notice in writing designating the last day of some month as the close of such fiscal year. The notice must be filed not later than January 29 of the year in which the fiscal period of 12 months closes. A return for that portion of the calendar year preceding the first full fiscal year must be filed on or before March 1 of the next calendar year, and the return for the fiscal year (12 months) must be filed on or before the last day of the 60-day period next following the close of the fiscal year.
Example: A company desiring to designate June 30, 1916, as the close of its fiscal year must file notice with the collector not later than January 29, 1916, and its return for its first fiscal year (July 1, 1914, to June 30, 1915) must be filed on or before August 29, 1915, and its return for the period January 1 to June 30, 1914, on or before March 1, 1916.

Extension of time.— In the case of neglect to file the return within the prescribed time, the collector is authorized to grant an extension for the filing period not exceeding 30 days, provided such neglect was due to absence or sickness of an officer required to sign the return, and provided an application in writing is made prior to the expiration of the period for which extension may be granted.

Signatures and verification. — Returns must be signed and verified by two officers of the company, that is, by the president, vice president, or other

principal officer, and the treasurer, or other financial officer, and must be sworn to before an officer authorized to administer oaths, and the seal of the attesting officer, if he is required to have a seal, must be impressed on the return in the space provided for that purpose.

Foreign insurance-companies. - Foreign insurance companies subject to the law are required to make returns to the collector of the district in which the principal place of business in the United States is located. The gross Income to be returned is that received from business transacted and capital invested in the United States. The losses deductible are those relating to the business done in this country and not compensated for by insurance or otherwise. The amount of interest deductible is the amount actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of one-half of the sum of the interest-bearing indebtedness outstanding at the close of the year plus the paid-up capital stock then outstanding (or if no capital stock the proportion of the capital employed in business), which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States. Such companies are not permitted to deduct foreign taxes paid, but may deduct from gross Income all domestic taxes paid within the year.

Penalties.- Companies refusing or neglecting to file returns within the time prescribed by law, or rendering false or fraudulent returns, shall be liable to a penalty of not exceeding \$10,000, and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return, shall be added to the assessment.

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CONTENTS OF BET U ENS BY COEPOEATION.

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Any officer of any company required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made, shall be guilty of a misdemeanor and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the cost of prosecution.

SUPPLEMENTARY STATEMENT.

The following Information must be furnished by every insurance company, without which the return will not be accepted as complete. The items herein relate to the items listed above and bear corresponding numbers.

1. Paid-up Capital Stock:

Unissued or treasury stock should not be Included in this Item, but only such stock as has been actually issued or is outstanding at the close of the year and for which payment has been received. Where the stock issued Is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

In case no stock is issued there should be reported the amount of capital actually employed In the business and property of the company at the close of the year.

\$

Total paid-up stock

\$

\$ - -

Indebtedness :

All interest-bearing indebtedness for the payment of which the company or its property is bound should be reported below.

Indebtedness wholly secured by collateral, the subject of sale in the ordinary business of the company should be reported here, but such indebtedness should not be considered in determining the amount of Interest deductible under item 6, as interest on such indebtedness is allowable as a deduction under item 4 (a) as an expense.

Character of obligation.

Rate of
Interest.

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Prln

—

Ipal.

Total indebtedness —

§

t. Gross Income:

Gross income of Insurance companies shall consist of the total of the gross revenues derived from the operation and management of their businesses and properties, including premiums, rentals, interest, dividends on stock of other organizations, whether subject to this tax or not, and from all other sources except those specifically excluded.

Any appreciation in the value of assets due to appraisal or adjustment and taken up on the books should not be reported as income until such appreciation, as a result of a complete or closed transaction, has been converted into cash or its equivalent.

The profit or income to be returned in the event of the sale of capital assets should be determined upon the basis of the difference between the cost and selling price of such assets. If the assets were acquired prior to January 1, 1909, the profit resulting from their sale may be prorated, in which case the amount apportioned to the years subsequent to January 1, 1909, will be included as income.

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EETUENS.

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(a) From Premiums:

Reinsurance and return premiums should not be included in gross income or deductions.

Life insurance companies need not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such policyholder within the year.

Mutual fire insurance companies must return as gross income the total

amount of premium deposits collected, less such amounts of said premium deposits as are returned to policyholders.

Mutual marine insurance companies must include as gross income gross premiums collected, less amounts paid for reinsurance.

All insurance companies must return under this item the net premium income as reported to the various States.

Extend on this line the total amount of actual premiums received or premium deposits which have been returned to policyholders within the year and not included as gross income

(b) From Rentals :

Rentals to be reported as Income will include all payments received in cash or its equivalent as rent on buildings or other property owned by the corporation making the return.

(c) From Interest:

Interest to be reported as income includes all interest received on bonds or securities owned by the corporation, with the exception of interest on obligations of a State or political subdivision thereof, or interest upon the obligations of the United States or Its possessions, which latter interest, for the purpose of information, should be ex- | | I I
tended on this line 1\$ 1 |]

(d) From Dividends Received;

Dividends received upon the stock of other corporations must be included in the gross income of the corporation, receiving the same and are not deductible from gross income in ascertaining the net income upon which the tax is computed.

(e) From Other Sources;

All other sources from which income has been received should be indicated below and the amount received from each such source- should be extended in the space provided.

Total

DEDUCTIONS.

Expenses, General;

The items below should only include the ordinary and necessary expenses paid within the year in the management and maintenance of the business and properties of the company, not including interest payments which are to be reported under Item 6, except interest paid on indebtedness wholly secured by collateral, the subject of sale in the ordinary business of the company, as such interest may be reported under this item as an expense. All expenses for labor, wages, commissions, fuel, light, repairs, and other items should be reported below.

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Expenditures for incidental repairs which do not add to the value of the property are deductible as expenses, but expenditures for additions and betterments which add to the value of the property are not deductible under this or any other item of the return. Expenditures for renewals and replacements are not as such deductible as expenses, but should be charged to depreciation reserve account.

Salaries of officers in order to constitute an allowable deduction must be reasonable compensation for the services rendered and must not comprehend any compensation for capital invested in the company.

Keutals should be reported separately under Item 4 (b).

(a) 1. Commissions

2. Labor, wages, etc.

3. Fuel, light, etc.

4. Interest on indebtedness wholly secured by collateral, the subject of sale, etc.

5. Repairs

6. Salaries of officers _

7. Other expenditures

Total expenses

8. Names of officers and employees to whom salaries of \$3,000 or more were paid during the year, and amount paid to each. (If the space below is not adequate, a list marked "Item 4 (a)," containing this information should be attached to this form.)

Niime. 1 Amount.

\$

Total _._

\$

(b) Rentals:

This item should include all rentals or other payments required to be made as a condition to the continued use or possession of the property.

In cases where interest on a mortgage on property occupied or used by the company is paid as a condition to its possession and use, such interest may be included under this item.

(a) Losses (Other than Policy Payments) :

Losses deductible under this item must be distinguished from depreciation or allowances for wear and tear, exhaustion, or obsolescence of property. The losses must be absolute, complete, actually sustained and charged off on the books of the company, and if the loss results from the sale of assets acquired prior to January 1, 1909, such loss may be prorated and the amount apportioned to the years subsequent to January 1, 1909, may be deducted under this item.

Under this item there may also be deducted losses from agency balances or other amounts charged off as worthless, and losses by defalcation, premium notes voided by lapse, provided such notes have been included in gross income.

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Payments on policy contracts should be reported under Item 5 (c).

Book entries representing a shrinkage in the value of securities are not a loss within the meaning of the law and can not be deducted from gross income either as a loss or as depreciation.

Losses compensated by insurance or otherwise are not deductible.

Reserves or additions to reserves covering liabilities for losses incurred^ reported, resisted, adjusted, or unadjusted, can not be deducted under this or any other item of the return, unless such reserves or the additions thereto are actually required by law.

Describe character of losses.

Date Amount

charged charged

off. of E.

,

Total

\$

(b) Depreciation:

The amount deductible on account of depreciation is an amount which fairly measures the deterioration during the year in the value of the physical property with respect to which it is claimed and such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities are not subject to wear and tear, exhaustion, or obsolescence within the meaning of the law, and any shrinkage in their value due to fluctuations in the market is not deductible either as depreciation or loss.

On what class of property is depreciation claimed? - - -

What was its costs? \$ At what rate was depreciation computed? - -

(c) Payments on Policies:

Under this Item should be reported all death, disability, or other policy claims, including fire, accident, and liability losses, matured endowments,, annuities, payments on installment policies, surrender values, and all claims actually paid under the terms of policy contracts. In the case of life insurance companies amounts paid as consideration for supplementary contracts, applied surrender values, dividends applied to pay renewal premiums, dividends applied to purchase paid up additions and annuities should be separately reported below.

State description of policy payments. | Amount of payment.

\$

- - J

(d) Net Addition to Reserve:

AH policy premiums, on which net addition to reserve is computed, must be included in gross income. The net addition may be based upon the highest authorized reserve required by the statutes of any State in which the company does business, but having adopted the requirements of one State the company can not base its reserve on the requirements of another State, for subsequent years. When the reserve at the beginning of the year is more than at the end of the year the "released reserve must be included in gross income. Assessment insurance companies will report as additions to guaranty or reserve funds the amounts actually deposited with the State or Territorial officers pursuant to law. In the case of life insurance companies, the "reinsurance reserve" and the "reserve for supplementary contracts," and in the case of fire, marine, accident, liability, and other insurance companies, the "unearned premium reserves," and only such other reserves as are specifically required by the statutes of the States within which the company is doing business, with net additions required by law, should be entered below.

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Class of reserve.

I Amount of re

Iserve at close of
Iprecedlmg year,

Amount of
net addi-
tion.

\$-

l-i-i

-U

Total-

(e) Amounts Repaid to Policyholders :

Mutual marine insurance companies are entitled to include in deducting from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof.

6. Interest Actually Paid :

The amount of interest which may properly be deducted under this item is the amount actually accrued and paid within the year on an amount of bonded or other Indebtedness not in excess of the paid-up capital stock outstanding at the close of the year plus one-half of the interest-bearing Indebtedness also then outstanding, where there is no capital stock, the amount of interest deductible is the amount actually paid on an amount of indebtedness not in excess, at any time during the year, of the capital employed in the business at the close of the year.

Interest paid on mortgage indebtedness assumed or unassumed on property to which the company has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, should be reported under this item.

Interest paid in lieu of rent on a mortgage secured by property which the company occupies should be reported under Item 4 (b).

Interest paid on indebtedness wholly secured by collateral, the subject of sale in the ordinary business of the company should be reported under Item i (a) and Item 2.

Interest Payments Actually Made During Year.

Name of obligation.

Amount of principal.

Rate of 1
interest.

Amount of interest
paid.

I

J.. -

1 ,

j

.

Total

;

X

\$

7. (a) Taxes, Federal and State:

(b) Taxes, Foreign:

Taxes deductible under these items are such taxes actually paid within the year as are imposed by either the United States or any State or Territory thereof, or by the Government of any foreign country, not including taxes for local benefits nor taxes paid by companies pursuant to their covenants on their bonds.

A reserve for taxes, as such, is not deductible.

Insurance companies paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such companies can not deduct the amount so paid in making their returns unless specially authorized to do so by the laws of the State in which they do business.

Where sufficient space is not provided for the entry of the information re-

quired In the "Supplementary Statement," lists containing full information in the form indicated should be marked in accordance with the particular item and attached to this form. Totals entered in the "Supplementary Statement" must agree with entries of corresponding items at the beginning of this form.

3Q2h EETUEA-S. [§ 82".

originaij instructions.

Eeverse of Form 1030 before revision.

Especial Notice. - This form [1030], properly filled out and executed, must be in the hands of the collector of internal revenue for the district in Avhich is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case tlie return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding \$10,000 is incurred.

1. Return of annual net income of corporations should be made on forms prescribed by the Treasury Department and should be filed with the Collector of Internal Revenue of the district in which such corporations have their principal places of business.
2. Before transmitting such returns to the collectors they must be verified by two officers of the corporation; that is, by two individuals, each holding a different official title, namely: the President, Vice President, or other principal officer, and its Treasurer or Assistant Treasurer, or Chief Financial Officer.
3. The affidavit of verification must be made before a Notary Public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.
4. Under tlie provisions of the law, the return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.
5. If the return is based upon the business transacted during the calendar year, it should be filed with the collector on or before the first day of March next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, or consecutive twelve months period other than the calendar year, duly designated in accordance with the law and the regulations, the return must be filed with the collector on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.
6. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding thirty days from the date when such

return is otherwise due. Application for such extension must be made prior to the date when the return is due.

7. The principal place of business as used in the act and in these regulations is held to mean the place or office in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

8. Item No. 1 of the schedule on the reverse side of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received, or in case no stock

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is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation.

In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisal, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year, resulting from business transacted and capital invested within the United States.

11. Item No. 4 (o) should include the total amount of all ordinary and necessary expenses paid out of earnings in the operation of the business and properties of the corporation, etc., exclusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (6) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property; that is to say, in cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation, and interest paid on such indebtedness will be deductible only under Item 6 of the return, and, together with other interest charges, must not exceed the limit fixed by the law for such interest deductions.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute and show as a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. The change in the value of stocks and bonds is properly taken up in the inventories or annual adjustment in the value of such securities and the income or losses indicated by this adjustment may be accounted for accordingly.

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14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a corporation, joint stock company, or association, or insurance company organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.

All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. Dividends received upon the stock of other corporations must be included in gross income and, under the provisions of the law, are not deductible therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes for which credit may be taken in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes as such is not deductible, but only taxes actually paid.

21. Reinsurance (except as provided by Note 23) and return premiumw should not be included in either gross income or deductions: as "net written premiums," agreeing with report to States, should be shown.

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22. Mutual fire insurance companies which i-equire their members to make premium deposits to provide for losses and expenses need not re- turn as income any portion of the premium deposits returned to their policyholders.

23. Mutual marine insurance companies shall include in their return of gross income the gross premiums collected and received by them, Jess reinsurance. (See note 21.)

24. Mutual marine insurance companies are entitled to deduct from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts betvsreen the ascertain- ment thereof and the payment thereof.

25. Life insurance companies need not include as income in any year such portion of any actual premium received from any individual policy- holder as shall have been paid back or credited to such individual policy- holder, or treated as an abatement of premium of such individual policy- holder vpithin such year.

26. Mutual fire insurance companies must return as income such por- tions of premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

27. The deduction alloviored under the act of August 5, 1909, of amounts received as dividends upon stock of other corporations subject to the tax therein imposed is not allowed under the act of October 3, 1913.

28. In the case of assessment insurance companies, whether domestic or foreign, the actual deposits of sums with the State or Territorial olficers pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funda.M

1« See supra, §§ 70, 71.

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To Be Filled In by Internal Revenue Bureau.

Examined by

Audited by

Recorded by

BETUENS.
Form 1031 (Revised).

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INCOME TAX.

The Penalty

For failure to file this return in the hands of the Collector of Internal Revenue within the time required by law is not more than \$10,000 and the assessment is increased fifty per cent.

To Be Filled In by Collector.

List No. Class

Assessment List 23-A

191-,

(Month.)
Page Line

IMPORTANT.

Read this form and
all instructions care-
fully and fill in sup-
plementary statement
before making entries
in return proper.

., ^ „«««„ t.^ I Return of Annual Net Income.

Above space to be

fhX^ul "d^istrfct'^lS ^««^"°° '■ ^«' "' October 3, 1913.)

lag district
date filed.

CORPORATIONS.

(Other than Insurance Companies.)

RETURN OP NET INCOME for the *^i'^i^?s'cal \ ^^^ ^^^^ • 1^1

by - -, -

(Name of corporation, Joint-stock company, or association.) (Kind of
business.)

and located at -- - , ,

(Street and number.) (City or town.) (State.)

(The address given must be that of the principal place of business of the
corporation.)

If no figures are to be extended opposite any item In the return the word
"None" should be inserted.

1. Total amount of paid-up capital stock outstanding at the close
of the year or the capital employed in the business
2. Total amount of bonded and other indebtedness outstanding at

the close of the year exclusive of Indebtedness wholly secured by collateral, the subject of sale in the ordinary business of the corporation __

3. Gross Income:

(a) From operations

(b) From rentals

(c) From interest

(d) From dividends received

(e) From other sources

Total gross income

Total deductions -

8. Net Income

Dollars. | ^

Deductions.

(a) Expenses, general .

(b) Rentals

(a) Losses

(b) Depreciation and depletion

8. (a) Interest actually paid

(b) Interest paid on deposits (banks)

(a) Taxes, Federal
State - .

and

(b) Taxes, foreign

Total Deductions

Dollars. I i

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We officers of the above-named corporation whose return of net Income is herein set forth, being severally duly sworn, each for himself, deposes and says that the items entered in the foregoing report and in the supplementary statement and in any additional list or lists attached to or accompanying this return, are, to his best, knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular. Sworn to and subscribed before me

this day of , 191

Seal of officer

taking

affidavit.

(Official capacity.

President.

Treasurer.

GBNBAL INSTRUCTIONS.

Time of filing returns.— Returns made on the basis of a calendar year must be filed with the Collector of Internal Revenue of the district in which is located the principal place of business of the corporation, on or before March 1; if made on the basis of a FISCAL Year * they must be filed within 60 days after the close of such year.

Principal place of business.— As used in the Income tax law the principal place of business is the place or office in which are kept the books of account, papers, and other data from which the return is prepared.

* Fiscal year.— Corporations desiring to make returns of annual net income on the basis of a fiscal year other than the calendar year, must, not less than 30 days prior to March 1, file with the collector a notice in writing designating the last day of some month as the close of such fiscal year. The notice must be filed not later than January 29 of the year in which the fiscal period of 12 months closes. A return for that portion of the calendar year preceding the first full fiscal year must be filed on or before March 1 of the next calendar year, and the return for the fiscal year (12 months) must be filed on or before the last day of the 60-day period next following the close of the fiscal year.
Example: A corporation desiring to designate June 30, 1915, as the close of its fiscal year, must file notice with the collector not later than January 29, 1915, and its return for its first fiscal year (July 1, 1914, to June 30, 1915) must be filed on or before August 29, 1915, and its return for the period January 1 to June 30, 1914, on or before March 1, 1915.

Extension of time.— In the case of neglect to file the return within the prescribed time, the collector is authorized to grant an extension for the period not exceeding 30 days, provided such neglect was due to absence or sickness of an officer required to sign the return, and provided an application in writing is made prior to the expiration of the period for which extension may be granted.

Signatures and verification.— Returns must be signed and verified by two officers of the corporation, that is, by the president, vice president, or other principal officer, and the treasurer or other financial officer, and must be sworn

to before an officer authorized to administer oaths and the seal of the attesting officer, if he is required to have a seal, must be impressed on the return in the space provided for that purpose.

Subsidiary companies.— The corporation making this return should attach hereto a list of all its subsidiary companies, if any, with the location of the principal place of business of each.

Foreign corporations. — Foreign corporations subject to the law are required to make returns to the collector of the district in which the principal place of business in the United States is located. The gross income to be returned is that received from business transacted and capital invested in the United States.

The losses deductible are those relating to the business done in this country and not compensated by insurance or otherwise. The amount of interest deductible is the amount actually paid within the year on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of one-half of the sum of the interest-bearing indebtedness

outstanding at the close of the year plus the paid-up capital stock then outstanding (or if no capital stock the proportion of the capital employed in business) which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States. Such corporations are not permitted to deduct foreign taxes paid, but may deduct from gross income all domestic taxes paid within the year.

Penalties.— Corporations refusing or neglecting to file returns within the time prescribed by law or rendering false or fraudulent returns shall be liable to a penalty of not exceeding \$10,000, and an additional tax of 50 per cent in case of neglect to file the return within the time prescribed by law, and 100 per cent in the case of a false or fraudulent return shall be added to the assessment.

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Any officer of any corporation required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement

with intent to defeat or evade the assessment required to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

SUPPLEMENTARY STATEMENT.

The following information must be furnished by every corporation, Joint-stock company, or association, without which the return will not be accepted as complete. The items herein relate to the items listed above and bear corresponding numbers.

1. Paid-up Capital Stock:

Unissued or treasury stock should not be included in this item, but only such stock as has been actually issued and is outstanding at the close of the year and for which payment has been received. Where the stock issued is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

In case no stock is issued there should be reported the amount of capital actually employed in the business and property of the corporation at the close of the year.

\$

(b) Paid-up "preferred stock"

Total paid-up stock _ -

\$

or (c) Capital employed In business

\$

Indebtedness :

AH interest- bearing indebtedness, for the payment of which the corporation or its property is bound, should be reported below. In the case of banking corporations and like financial institutions deposits should not be reported as indebtedness. Indebtedness wholly secured by collateral, the subject of sale in the ordinary business of the corporation should be reported here, but such indebtedness should not be considered in determining the amount of interest deductible under item 6 (a) as interest on such indebtedness is allowable as a deduction under item 4 (a) as an expense.

Rate of
Character of obligation. interest. Principal.

\$

\$

Gross Income:

All manufacturing, mercantile, and other corporations which determine their annual gain or loss by inventory are required to state the same in the form indicated below. If the annual income or loss is determined otherwise, the methods employed must be stated in the space provided.

Any appreciation in the value of assets due to appraisal or adjustment and taken up on the books should not be reported as income until such appreciation as a result of a complete or closed transaction has been converted into cash or its equivalent.

The profit or income to be returned in the event of the sale of capital assets should be determined upon the basis of the difference between the cost and selling price of such assets. If the assets were acquired prior to January 1, 1909, the profit resulting from their sale may be prorated, in which case the amount apportioned to the years subsequent to January 1, 1909, will be included as Income.

i(a) From Operations :

Per inventory -

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Sales during year

Stock on hand at close of year

Over head charges
should not be in-
cluded in inventory
(see item 4).

Total -I?-.

Purchases during year

Stock on hand at beginning of]

year ,L-i--i-- ,L--

Total

1

\$

\$

(If inventory shows loss make entry in red ink or strike out gain.)

If Inventory is not used, state below method of determining gain or loss.

(b) From Rentals :

Rentals to be reported as income will include all payments received in cash or its equivalent as rent on buildings or other property owned by the corporation making the return.

(c) From Interest:

Interest to be reported as income includes all interest received on bonds or securities owned by the corporation with the exception of interest on obligations of a State or political subdivision thereof or interest upon the obligations of the United States or its possessions, which latter interest for the purpose of information should be extended! I I | on this line 13 1 | |

(d) From Dividends Received:

Dividends received upon the stock of other corporations must be included in the gross income of the corporation receiving the same and are not deductible from gross income in ascertainine the net Income upon which the tax is computed.

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(e) From Other Sources:

All other sources from which income has been received should be indicated below and the amount received from each such source should be extended in the space provided.

Total 1\$..

DEDUCTIONS.

4. Expenses, General:

The items below should only include the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation, not including interest payments, which are to be reported under Item 6 (a), except interest paid on indebtedness wholly secured by collateral the subject of sale in the ordinary business of the corporation, as such interest may be reported under this item as an expense.

All expenses for material, labor, fuel, and other items entering into the cost of the goods produced, sold or inventoried are deductible under this head as expense, provided such items have not been considered in determining the income derived from operations under Item 3 (a).

Expenditures for incidental repairs which do not add to the value of the property are deductible as expenses, but expenditures for additions and betterments which add to the value of the property are not deductible under this or any other item of the return. Expenditures for renewals and replacements are not, as such, deductible as expenses, but should be charged to depreciation reserve account.

Salaries of officers in order to constitute an allowable deduction must be reasonable compensation for the services rendered and must not comprehend any compensation for capital invested in the business.

Rentals should be reported separately under Item 4 (b).

(a) 1. Labor*, wages, commissions, etc-

2. Fuel, light, power etc

3. Repairs

4. Interest on indebtedness wholly secured by collateral the subject of sale, etc

B. Salaries of officers -

6. Other expenditures

Total expenses \$.

4, (a) 7. Names of officers and employees to whom salaries of \$3,000 or more were paid during the year and amount paid to each. (If the space below is not adequate, a list marked "Item 4 (a)" containing this information should be attached to this form.)

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Name. 1 Amount.

,

^

Total

\$

(b) Rentals:

This item should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, such interest may be included under this item.

6. (a) Losses :

Losses deductible under this item must be distinguished from depreciation or allowances for wear and tear, exhaustion, or obsolescence of property. The losses must be absolute, complete, actually sustained and charged off on the books of the corporation, and if the loss results from the sale of assets acquired prior to January 1, 1909, such loss may be prorated and the amount apportioned to the years subsequent to January 1, 1909, may be deducted under this item.

Book entries representing a shrinkage in the value of securities are not a loss within the meaning of the law and can not be deducted from gross income either as a loss or as depreciation.

Losses compensated by insurance or otherwise are not deductible.

Describe character of losses.

Date charged off. | Amount charged off.

Total-

How were the deducted losses ascertained and determined?

When were they ascertained to be losses?

(b) Depreciation and Depletion :

The amount deductible on account of depreciation is an amount which fairly measures the deterioration during the year in the value of the physical property with respect to which it is claimed, and such amount should be determined upon the basis of the cost of the property and the probable number of years constituting its life. Stocks, bonds, and like securities are not subject to wear and tear, exhaustion, or obsolescence within the meaning of the law, and any shrinkage in their value due to fluctuations in the market is not deductible either as depreciation or loss.

On what class of property is depreciation claimed?

What was its cost? \$ At what rate was depreciation computed? .- - -

Depletion.- In computing depletion in the case of natural deposits the rate should not exceed 5 per cent of the gross value at the mine of the output for the year.

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state cost of property exclusive of equipment, I improvement, etc 1\$_.

Amount previously charged oft on account of |

depletion 1\$..

Date of purchase of property-

6. (a) Interest Actually Paid:

The amount of interest which may properly be deducted under this item is the amount actually accrued and paid within the year on an amount of bonded or other indebtedness not in excess of the paid-up capital stock outstanding at the close of the year plus one-half of the interest-bearing Indebtedness also then outstanding. Where there is no capital stock the amount of Interest deductible is the amount actually paid on an amount of indebtedness not in excess at any time during the year of the capital employed in the business at the close of the year.

Interest paid on mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, should be reported under this item.

Interest paid in lieu of rent on a mortgage secured by property which the corporation occupies should be reported under Item 4 (b).

Interest paid on indebtedness wholly secured by collateral the subject of sale in the ordinary business of the corporation should be reported under Item 4 (a) and Item 2.

INTEREST PAYMENTS ACTUALLY MADE DURING YEAR.

Name of obligation.

1 Amount of principal.

Rate of
interest.

Amount of Interest
paid.

\$

”

S

%

(b) Interest Paid on Deposits (Banks) :

Interest paid on deposits is a proper deduction from gross income under this item in case of banks and banking institutions only.

7. (a) Taxes— Federal and State:

(b) Taxes— Foreign :

Taxes deductible under these items are such taxes actually paid within the year as are imposed by either the United States or any State or Territory thereof, or by the Government of any foreign country, not including taxes for local benefits, nor taxes paid by corporations pursuant to their covenants on their bonds.

A reserve for taxes, as such, is not deductible.

Banks paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such banks can not deduct the amount so paid in making their return unless specially authorized to do so by the laws of the State in which they do business.

Where sufficient space is not provided for the entry of the information required in the "Supplementary statement," lists containing full information in the form indicated should be marked in accordance with the particular item and attached to this form. Totals entered in the "Supplementary statement" must agree with entries of corresponding items at the beginning of this form.

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The Treasury Department has promulgated the following instructions, which were endorsed upon the forms for the return of corporations except in the case of insurance companies for which special instructions were issued before the revision. New instructions are annexed to the revised forms.

ORIGINAL INSTRUCTIONS.

Special Notice. — This form, properly filled out and executed, must be in the hands of the collector of Internal revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis,

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding \$10,000 is incurred.

1. This return of annual net income should be filed with the Collector

of Internal Revenue of the district in which the corporation has its principal place of business.

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2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.
3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, and treasurer or assistant treasurer, or chief financial officer.
4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.
5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.
6. If the return is based upon the calendar year it should be filed

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with the collector on or before the first day of March next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the thirty-day period for which such extension is desired and can be granted.
8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in instalments or upon assessment, only so much of the capital as has been actually paid in upon such instalments or assessments should be reported under this item.
9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item Nff. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisalment, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year.¹⁸ In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.¹⁹

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation,⁸⁰ etc., exclusive

17 *Supra*, § 42. " *Supra*, §§ 37, 38, 40.

18 But see *supra*, § 58. *" *Supra*, § 60.

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of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (6) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (5) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under item 5 (a) al the return.²¹

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where u depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of inter-bearing [Sic] indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close

»1 Supra, §§ 64, 69.

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of the year; or in case of a corporation, joint stock company or association, or insurance company organized under the laws of a foreign country, so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from, business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States. All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. Dividends received upon the stock of other corporations must be included in gross income and are not deductible therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.M

ZZjSttpro, § 51.

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22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.²³

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year."

28 But see supra, § 58.

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§ 83. Oath to return. The statute directs that the return be made "under oath or affirmation." ^ The Treasury Eegulations :

"The annual return must be verified by oath or affirmation of the person making the same. Collectors are directed by law to require every return to be so verified by the person rendering it. The affidavit may be made before the collector' for the district or before any officer authorized by law to administer oaths." ^

By the instruction as to returns by individuals:

"9. This return, properly filled out, must be made under oath oi affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a Justice of the Peace or Magistrate not using a seal a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return." *

By the instruction as to returns by corporations :

"3. Eeturns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, and treasurer or assistant treasurer, or chief financial officer.

"4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose." *

The oath, if administered without the United States, may be taken before any secretary of legation or consular officer at the post, port, place, or within the limits of his legation, consulate or commercial agency.*

§ 84. Secrecy of returns. The secrecy of returns by individuals is secured by penal provisions. The Revised Stat-

§ 83. 1 II, Subsection D. « Forms 1030-1036.

2Tr. Reg. 22. B U. S. Rev. Stat. § 1750, (U. S.

3 Form 1040. In the Form 1041 Comp. Stat. 1901, p. 1196). See

for Fiduciaries this is Instruction 8. Foster, Fed. Pr. 8th ed. § 192.

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utes as amended by the Act of October 3, 1913, provide: "It shall be unlawful for any collector, deputy collector, agent, clerk or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof,, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return ; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, or at the discretion of the court ; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government." ^

The Act of 1913 provides: "When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns

shall be open to inspection only upon the order of the President,, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President : Provided further. That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have

§ 84. 1U. S. R. S. § 3167 as amended by Act of October 3, 1913, II, Subsection I.

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access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint-stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe." *

A similar provision in the Corporation Tax Law was held to be constitutional.^ The Treasury Regulations provide:

"When the assessments shall have been made, the returns shall be filed in the office of the commissioner and shall constitute public records, subject to inspection upon the order of the President, under rules and regulations prescribed by the Secretary of the Treasury and approved by the President. Copies of returns on file in the Commissioner's office are not permitted to be sent to any person, except to the corporation itself or to its duly authorized attorney." *

"Upon request of the governor of a State which imposes a general income tax, the proper officers of such State may have access to the returns filed by corporations doing business in such States, or to an abstract thereof showing the name and income of such corporations, etc., at such times and in such manner as the Secretary may prescribe. In no case are the original returns to be removed from the office of the commissioner, except upon order and by direction of the Secretary of the Treasury or the President." '

"At the request of the Attorney General, or by direction of the Secretary of the Treasury, certified copies of returns may be made and delivered to the United States district attorneys for their use as evidence in the prosecution or defense of suits in which the collection or legality of the tax assessed on the basis of such returns is involved, or in any siit to which the United States Government and the corporation, etc., making the return are parties and in which suit such certified copies would constitute material evidence, of the Secretary of the

2 Subsection II, G, (d). printed in full infra, part VII.

3 Flint V. Stone Tracy Co. 220 U. * Tr. Eeg. 178.
S. 107, 55 L. ed. 389, 31 Sup. Ct. 6 Tr. Eeg. 179.
Hep. 342, Ann. Caa. 1912B, 1312,

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Treasury which was by a subsequent order approved by the President." *

"For the purpose of making effective the legislative intent thus expressed, the President has ordered that such returns shall be open to inspection under the following rules and regulations. The word 'corporation' when used alone herein, shall be construed to refer to corporations, joint-stock companies or associations and insurance companies.

"1. The return of every individual and of every corporation^ joint-stock company or association, and every insurance company, whether foreign or domestic, shall be open to the inspection of the proper officers and employees of the Treasury Department. Returns of individuals shall not be subject to inspection by any one except the proper officers and employees of the Treasury Department.

"2. Where access to any return of any corporation is desired by an officer or employee of any other department of the Government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department or other government establishment in which such officer or employee is employed,, and transmitted to the Secretary of the Treasury. If the return of a corporation is desired to be used in any legal proceedings other than those to which the United States is a party, or to be used in any manner by which any information contained in the return could be made public, the application for permission to inspect such return or to furnish a certified copy thereof shall be referred to the Attorney General, and if recommended by him transmitted to the Secretary of the Treasury.

"3. All returns, whether of persons or of corporations, joint-stock companies or associations, or insurance companies, may be furnished, upon approval of the Secretary of the Treasury, for use, either in the original or by certified copies thereof, in any legal proceedings before any LTnited States grand jury or

6 Tr. Reg. 180.

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in the trial of any cause to which both the United States and the person or corporation or association rendering the return are parties either as plaintiff or defendant, and in the prosecution or defense or trial of which action, or proceeding before a grand jury, such return would constitute material evidence, but in any ease arising in the collection of the income tax, the Commissioner of Internal Revenue may furnish for use to the proper officer either the original or certified copies of returns without the approval of the Secretary of the Treasury.

In all cases where the use of the original return is necessary, it shall be placed in evidence by the Commissioner of Internal Revenue or by some officer of the Bureau of Internal Revenue designated by him for that purpose, and after such original return has been placed in evidence it shall be returned to the files in the office of the Commissioner of Internal Revenue at Washington, D. C.

"4. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return, of any corporation, by any bona fide stockholder in such corporation. The person desiring to inspect such return shall make application, in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate, signed by the president, or other principal officer, of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a bona fide stockholder in said company. (Where this certificate cannot be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the applicant is a bona fide stockholder and, therefore, entitled to inspect the return made by such company). Upon receipt of such application the corporation whose return it is desired to inspect shall be notified of the facts and shall be given opportunity to state whether any legitimate reason exists for refusing permission to inspect its returns

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of annual net income by the stockholder applying for permission to make such inspection. The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary to a stockholder to make such inspection cannot be delegated to any other person.

"5. The returns of the following corporations shall be open to the inspection of any person upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request :

"(a) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United States, for the purpose of having its shares dealt in by the public generally.

"(b) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubt as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

"Returns can be inspected only in the office of the Commissioner of Internal Revenue, in Washington, D. C. In no case shall any collector, or any other internal revenue officer outside of the Treasury Department in Washington, permit to be inspected any return or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return, except in answer to a proper subpoena, in a case to which the United States is a party.

"6. Returns of individuals shall not be open to the inspection of any person other than the proper officers and employees of the Treasury Department or person rendering the same, and are under no conditions to be made public, except where such publicity shall result through the use of such returns in any legal proceedings in which the United States is a party.

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"7. Upon request of the governor of a State imposing a general income tax, the proper officer of such State, to be designated by name and official position by the Governor of such State in his application to the Secretary of the Treasury, may have access to the returns or to abstracts thereof showing the name and income of each corporation, joint-stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe. Such application shall be made in writing, addressed to the Secretary of the Treasury and shall show (first) that the State, whose governor makes the request, imposes a general income tax; (second) the name and address of each corporation, etc., to which access is desired; (third) why permission to inspect the returns of the corporations, etc., named in the request is desired, and (fourth) what officer or officers are designated to make the desired inspection, giving their names and official designations. Such request must be signed by the governor of the State and sealed with the seal thereof, and shall be transmitted to the Secretary of the Treasury for his consideration and action thereon.

"No provision is made in the law for -furnishing a copy of any return to any person or corporation, and no copy of any return will be furnished to any other than the person or corporation making the return, or their duly constituted attorney, except as hereinbefore authorized.

"The provisions herein contained shall be effective on and after the 1st day of September, 1914." '

IT. D. 2016, approved by the shears, then thrown into large bags, T'resident, July 28, 1913. Similar and conveyed with equal care to a regulations were made under the paper manufactory, where, under the Corporation Tax Law of 1909. The inspection of a commissioner, they

lack of secrecy concerning the were committed to the mash tub:
amount and sources of a man's in- and he did not leave them till they
come has been one of the chief were reduced to a pulp." - The Prin-
criticisms upon income taxation. ciples of Taxation: or Contribution
Upon the repeals in 1802 and in according to Means; in which it is
1813, of the British statutes impos- shewn that if every Man pays in
ing income taxes, all the records of Proportion to the Stake he has in
each tax were destroyed. In 1802, the the Country, the present Ruinous
papers "were carefully collected and and Oppressive System of Taxation,
cut into pieces with large stationers' the Custom House, and the Excise
Foster Income Tax. - 24.

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Office may le abolished, and the na-
tional Debt Gradually and Easily
paid off. By William Frend. Lon-
don, 1804, p. 3. Seligman, Income
Tax, 88, 113.

There are not wanting authorities
to contend that such secrecy is of
no advantage. Francis Newbery
said of the oath of secrecy imposed
upon the tax collectors: "Is it not
a prudish delicacy, and a solecism
in finance?" And, again, "Notorie-
ty is the antidote to subterfuge and
evasion." - Observations on the In-
come Act; particularly as it relates
to the Occupiers of Land: idth some
Proposals of Amendment. To which
is added a Short Schema for Melio-
rating the Condition of the Labour-
ing Man. By Francis Newbery, Lon-

don, 1801, pp. 13, 35. Thomas Clio Bickman said: "I do not see why the exact state of a man's pecuniary affairs should not be known, as well as the colour of his coat, or the complexion of his countenance." "It would be well if every iota of every man's income, whether in or out of business, could be known. If it could be ascertained, what property every man hath, and how he gets and applies it; it would be, like a correct chart to a mariner, a guide over the rocks, and through the mazes of society." - Mr. Pitt's Democracy manifested; in a Letter to him, containing Praises of, and Strictures on, the Income Tax. By Thomas Clio Eickman, London, 1800, pp. 9-10, 28. Benjamin Sayer said: "that persons who do not carry on trade speculatively, but prudently, do not dread an exposure of the state of them." - An Attempt to shew the Justice and Expediency of substituting an Income or Property Tax for the present Taxes, or a part of them; as affording the most Equitable, the least Injurious, and (under the modified Procedure suggested therein) the least Obnoxious Mode of Taxation; also, the most Fair, Advantageous, and Effectual Plans of reducing the National Debt. By Benjamin Sayer. London, 1833, p. 32. Seligman, In-

come Tax, pp. 86, 125. The United States during 1863, through the Commissioner of Internal Revenue, issued instructions that the returns should be open for inspection to the revenue officers alone. Later, Secretary Fessenden, in order that "the amplest opportunity may be given for the detection of any fraudulent return that may have been made" gave the public free access to the return. (Boutwell, 4th ed. p. 259. The newspapers then freely published lists of incomes that had been returned. Publicity was defended by the New York Tribune, which said: "So long as an Income Tax shall be required and levied, we are satisfied that it is

best for all who are honestly concerned therein that there should be no restriction on giving publicity to the items." (Jan. 21, 1865, p. 4, col. 3.) The New York Times said that in this year only could full returns be secured and that during two years the consequences had been that it gained millions of dollars for the Government. (July 9, 1866, p. 4, col. 4-5.) And, later, argued that this prevented collusion between taxpayers and unfaithful collectors. (N. Y. Times Aug. 7, 1860, p. 4, col. 2.) Later, however, the Times reversed its decision, saying that a properly organized revenue-service would be able to guard against evasion and that then publicity would be needless and a nuisance, which Congress might be asked to abate. (July 26, 1869, p. 4, col. 3.) And later: "The publicity given to the returns is offensive and objectionable." (Aug. 7, 1869, p. 4, col. 2.) The Commercial and Financial Chronicle had before this said that publicity led to falsification of returns for ostentation and to secure credit, since young business men might be unable to retain their standing and credit if they gave truthful returns. (Feb. 10, 1866, vol. 2, p. 162.) But on April 5th, 1870, shortly after the appointment of Delano, Commig-

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It was ruled under a former commissioner that income returns were not privileged communications and the collector had no right to withhold them in evidence.'

The former rules for the collection of internal revenue forbid the collectors to produce the records, or the copies thereof, in the State court. They are also directed to decline to testify as to facts contained in the records or coming to their knowledge in their official capacity.' Such a rule was authorized by the general authority conferred on the Secretary of the Treasury by the Revised Statutes of the United States.^" In England a defendant agreed to sell his business to the plaintiff, stating his income from it to be £2,000 per annum. The plaintiff brought a bill of discovery as to the defendant's income, on the ground that the defendant had stated to the tax commissioners, that his income was only £500; and it was held that discovery would

not be allowed, since it would render the defendant liable to the penalty; and the master of the rolls went even further in saying that discovery would not be allowed if there were any question of a penalty, "Considering the provisions contained in the act for preventing or avoiding disclosure of the returns." ** How far such a decision is applicable under the present statute remains to be seen.

§ 85. Discovery. The Revised Statutes further provide that "When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make according to the best information of Internal Revenue, hereafter, Fed. Pr. 5th ed. § 339, p. 1092, bade the assessors to furnish lists where the rule is set forth at length, for publication. (11 Int. Rev. Rec. ⁰ *Boslice v. Comingore*, 177 U. S. 113.) The practice was forbidden 459, 460, 461, 44 L. ed. 846, 847, 20 by Congress. (July 14, 1870; 16 Sup. Ct. Rep. 701, s. c. *Be Gomin-* Stat. at L. p. 259, Sec. 11 ; published *gore*, 96 Fed. 552 ; *Stegall v. Thur-* in full *infra*, Part IV.) *Smith's U. man*, 175 Fed. 813. See *Re Lamler-* S. Federal Internal Tax History, *ton*, 124. Fed. 446. from 1861 to 1871, p. 68. [^] *Mitchell v. Koeclcer*, 11 Beav. 8 Ruling 10 Int. Rev. Rec. 5. 380, 382. See, also, authorities cited 9U. S. Rev. Stat. § 161 (U. S. *j»/ra* under Part III. Comp. Stat. 1901, p. 80). See *Fos-*

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tion which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association." [^]

In order to make it possible that the collector may make the return in case of the default of the taxpayer, various proceedings have been devised to assist him. Of these, the first are proceedings for discovery. It is provided : "That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or depu-

ty collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postoffice, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not

§ 85. 1 U. S. Eev. Stat. § 3176, U. amended by Act of October 3. 1913, S. Comp. Stat. 1901, p. 2068, as L

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reside and cannot be found within such state, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

It is to be observed that it is only the collector and not the ■deputy collector who is authorized to issue such process. His right to this examination is to be distinguished from that conferred by section 3163 of the Revised Statutes upon the former supervisors of internal revenue. The latter were entitled to inspection of "books, papers, accounts, and premises," without notice to the taxpayers ; but the collector under section 3174 is entitled to the examination by the express words of the statute only after notice by means of this summons.' Accordingly the summons which he issues should state the object of the examination with sufficient fairness: "My impression is that the summons should state with reasonable certainty the cause of its being issued; as that the assessor is dissatisfied with the returns or the like, and the subject-matter of the inquiry. It is not like the mere subpoena." * The summons should state the place where the examination is to be held. It must allow a reasonable time in which to comply with its command and must be limited to the realm of examination into which the collector is entitled to enter." Thus it was held that the summons cannot require the production of books kept anterior to the passage of

the income tax laws.' The right to examination is confined to the books of the taxpayer, and the examination cannot be made to include books of persons with whom the taxpayer has had dealings.'

The summons "shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand or left at his last and usual place of abode, allowing such

SU. S. Eev. Stat. § 3173, as amend- 2,570; In re PtUlUps, 10 Int. Kev.

ed by Act of October 3, 1913, I. Rec. 107, Fed. Cas. No. 11,097.

iStamood v. Green, 2 Abb. (U. 6 [7. S. v. Fordyce, 13 Int. Eev.

S.) 184, 3 Am. L. T. 133, Fed. Cas. Eec. 77. Fed. Cas. No. 15,130.

No. 13,301. eibid.

4LOWEXL, J., In re Chadwick, 1 "> Re Strouse, 1 Sawv. 005, Fed

Low. Dec. 439, 443, Fed. Cas. No. Cas. No. 13,548.

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person one day for each twenty-five miles he may be required to travel computed from the place of service to the place of examination ; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty." '

In a proceeding of this character, where the taxpayer claimed the privilege of refusing to produce his books, on the ground that a criminal proceeding had been commenced against him for making false and fraudulent returns, and that to produce the books or give testimony would incriminate him, Mr. Justice Blatchfoed said:

"The use of any entries in the books and of any test'mony given is solely to furnish evidence for making a true return. If there were no entries in any books of account in the possession, custody, or care of the relator relating to the trade or business of the relator during the period named in the summons, the relator is not bound to produce them, but if there are such entries, he is bound to bring the books. He refuses now to bring the books at all, while he does not deny that they contain such entries. He must therefore bring the books. But he is not at once obliged to submit the books, or any of them, to the inspection of the assessor or of any other person.' The ■entries in question and not the books are the things sought for by the section. When the books are brought, the relator must appear with them under the summons to give testimony.

He must then be asked whether there are any such entries :as the summons specified. If he says there are, he must then be asked to exhibit any entry or entries relating to the particular point or matter to be named in the inquiry within the scope of the summons as to subject-matter and time. If he says that he cannot do so without incriminating himself, or furnishing thereby a link in the chain of evidence which might criminate him, he is protected from exhibiting such entry or ■entries. And he is protected in like manner from giving testimony in reply to any particular question put to him. If

«U. S. Rev. Stat. § 3174. 9 But see contra, In re Strouse, 1

Sawy. 605, Fed. Cas. No. 13,548.

§ 85] DISCOVEEY. 375

there be any entry as to which he does not claim protection, he is entitled in disclosing such entry, to withhold and conceal all entries as to which he does claim protection. The power of the assessor under the fourteenth section " to make out a proper return on which to assess the tax, and then to add one hundred per cent, to such tax, in case a false return has been made, is ample, even in the absence of the books and testimony of the relator; and the withholding of such books and testimony when an opportunity is offered to the relator to have the benefit of them, will warrant the assessor in making out a return on the best information he can obtain and in assessing the tax thereon, and will deprive the relator of all ground of complaint as to the amount of the tax." ^*

In accordance with this opinion, the examination was directed to proceed in the manner indicated.

"Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collector may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and if satisfactory proof is made, to issue an attachment directed to some proper officer for the arrest of such person, and upon his being brought before him, to proceed to the hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper, not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such person for his default or disobedience." ^*

Judge Shipman suggested a query as to the constitutionality of the foregoing section.** It was held constitutional, however, in at least two cases ; ** but the Supreme Court of the United States has never passed upon the question.**

10 U. S. E. S. § 3176. *re Meador*, 10 Int. Rev. Rec.

Lippman, 3 Ben. 95, Fed. 74, Fed. Cas. No. 9,375; *Perry v.*

Cas. No. 8,382. *Neiosome*, 10 Int. Rev. Rec. 20, Fed.

12 U. S. Rev. Stat. § 3175. Cas. No. 11,009.

13 *jijx parte Ives*, 1 Int. Rev. Rec. *i** It is discussed at length *supra*,
145, Fed. Cas. No. 7,114. § 34.

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EETUENS.

[§ 85

It has been held that an order to show cause may issue before the attachment; *'** that the proceedings not being criminal in their character may be amended by the court ; " and that an examination of the taxpayer will not be refused on the ground that the examination would expose him to a penalty, such penalty being said not to be within the constitutional provision against self-incrimination. *^*'

It was held in one case that in a proceeding for contempt, no supersedeas could be obtained, "no provision of law existing whereby a writ of error would lie to the decision made by the judge in a proceeding of this nature out of court and while sitting simply as judge under the revenue acts of 1866 and 1868." " This decision, however, was rendered before the Act of March 3, 1891, which has since been incorporated in the Judicial Code.*"

16 *In re Chadwick*, 1 Low. Dec. 439,
Fed. Cas. No. 2,570. Cf. *Matter of Meador*, 1 Am. U. S. 317, 2 Am. Law Times, 140, 10 Int. Rev. Rec. 74, Fed. Cas. No. 9,375.

it Hid.

*1** *In re Strouse*, 1 Sawy. 605, Fed. Cas. No. 13,548; *In re Phillips*, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097. But see *Boyd v. United*

States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524, and supra, §§ 30, 31. In the investigation before the Grand Jury of the District of Massachusetts of a charge of smuggling against Mary A. Dolan, the American managing partner of the banking firm of Munroe & Company, which transacted business in Paris and New York, refused to obey a subpoena duces tecum directing her to produce checks drawn by her upon his Paris house, which were in France. It was held that he could not be committed for contempt because of such refusal, although it appeared that he did not inform his partners in Paris of the service of the subpoena and did not request that the checks be forwarded to this country in obedience to the same. *Munroe v. United States* (C. C. A.) 216 Fed. 107, reversing 210 Fed. 326. Before the reversal of his commit-

ment in the court below. Miss Dolan notified the Paris house of Munroe & Company not to send the checks. The bankers instituted proceedings to set aside such prohibition. The First Chamber of the tribunal in Paris, over which Monier presided, dismissed the bankers' application, holding that a banking house, without being obligated to professional secrecy in the strict legal sense of the word under the penalties prescribed by article 378 of the Penal Code, is none the less pledged to absolute discretion as regards the business of its customers, who are the sole judges to determine whether the banker should or should not give information concerning their mutual transactions, except for the purpose of the service of public justice or the public interest, and that the public policy of France would not be subserved by aiding in the enforcement of the protective tariff of a foreign country which discriminated against French manufactures. *Le Matin*, July 16, 1914.

19 *Re Meador*, 10 *Int. Rev. Rec.* 74,

Fed. Cas. No. 9,375.

20 Act of March 3, 1911, §§ 128, 238; Foster's Fed. Pr. 5th ed. §§ 688, 693, 695.

§ 86] Entry of taxpayer's premises. 377

The Treasury Regulations provide: "No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account." **

"The books of a corporation are assumed to reflect the facts as to its earnings, income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation." **

"For the purpose of verifying any return, made pursuant to this act, the Commissioner of Internal Revenue may, by any duly authorized revenue agent or deputy collector, cause the books of such corporation to be examined, and if such examination discloses that the corporation is liable to tax in addition to that previously assessed, or assessable, the same shall be assessed and shall be payable immediately upon notice and demand. For the purpose of such examination, the books of corporations shall be open to the examining officer, or shall be produced for this purpose upon summons issued by any properly authorized officer." ^

"All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers." *

§ 86. Entry of taxpayer's premises. The Revised Statutes provide: "Any collector, deputy collector, or inspector may enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept within his district, so far as it may be necessary for the purpose

21 Tr. Reg. 182. «» Tr. Reg. 186.

88 Tr. Reg. 183. «*Tr. Reg. 62.

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of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same who refuses to admit such officer, or to suffer him to examine such article or articles, shall for every such refusal forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector in the execution of any power or authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt or endeavor so to do, the person so offending, except in cases otherwise provided for, shall for every such offense forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court."

This provision has been held to be not unconstitutional.*

The officers mentioned in the section may enter without process, but the right of entry exists only when the circumstances prescribed in the section arise, that is, where the articles or objects subject to tax are made, produced, kept, or actually exist.' Even national banks are not exempt from such entry.* The only officers authorized to make the entry are those specifically named in the section. A collector's clerk, therefore, has no such right.' An indictment under this section must state the cause of action exactly. It is fatally defective, for example, unless it says that at the time of the entry the premises contained articles subject to tax.* The statutory words "forcible attempt to rescue" without specifications do not sufficiently describe the act to sustain an indictment, even after verdict.

§ 87. Penalties. The penalties enforced by the act are for three different defaults : for failure to make a return, for making a false or fraudulent return, and for failure to pay the tax. Penalties for default in the payment of the tax are subsequently considered.'

The act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified

§ 86. 1 U. S. Rev. Stat. § 3177, B JJ. 8. v. Harm, 95 U. S. 580, 24 U. S. Comp. Stat. 190], 2069. L. ed. 531.

2/71 re Meador, 10 Int. Rev. Rec. ^U. 8. v. Ford, 34 Fed. 26. But 74, Fed. Cas. No. 9,375. But see see U. 8. v. Fears, 3 Woods, 510, supra, § 31. Fed. Cas. No. 15,080, when those

3 U. 8. V. Fears, 3 Woods, 610, words were used without objection.

Fed. Cas. No. 15,080; 17. 8. v. Mann, § 87. 1 Infra, § 106.
95 U. S. 580, 24 L. ed. 531.

4(7. S. V. Rhawn, 11 Phila. 521,
Fed. Cas. No. 16,150.

§ 87] PENALTIES.

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in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution." *

"If any corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association or insurance company shall be liable to a penalty of not exceeding \$10,000." *

The Revised Statutes provide that: "In case of any return of a false or fraudulent list or valuation intentionally," the Commissioner of Internal Revenue "shall add 100 per centum to such tax ; in case of refusal or neglect, except in case of sickness or absence, to make a list or return or to verify the same as aforesaid, he shall add fifty per centum to said tax." *

Upon the courts is imposed the task of reconciling the inconsistency of some of these provisions.

The penalty imposed by the Revised Statutes has been held constitutional,* although Mr. Justice Field questioned whether it could be imposed in the absence of fraud on the part of the taxpayers.* That case reversed on another ground a decision by Judge Shipman at circuit,' in which he held that the penalty could be imposed under such circumstances. On the other hand. Attorney General Sneed ruled that it could not.'

By the procedure under the former acts there were two officials whose co-operation was necessary to collect the tax, -
•one was the assessor whose general duty it was to procure the

* Subsection F. 6 German Savings Bank v. Arch-

3 Subsection G (d). laid, 104 U. S. 708, 26 L. ed. 901.

4U. S. Rev. Stat. § 3176, U. S. Ts. c. 15 Elatchf. 398, i'ed. Cas.

■Comp. Stat. 1901, p. 2068, as amend- No. 5,364.
ed by Act of October 3, 1913. 8 11 Ops. Atty. Gen. 183.

S Doll y. Evans, 9 Phila. 364, Fed.

■Cas. No. 3,969.

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return and fix the amount of the tax, and the other was the collector whose sole duty it was to collect. It was ruled by one attorney general that the power to add the penalty to the return ceased when the assessor had transmitted the list to the collector for collection.** Under the present law, which requires the tax to be assessed by the commissioner, it may be a question whether the same condition would now obtain.

It has been held that when suit is brought to recover a tax with penalties, only one penalty can be recovered for all defaults prior to its commencement.®

The Revised Statutes as amended provide: "'That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postofEce, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation." "

The Act further provides: That, as regards individuals, corporations, joint-stock companies, associations and insurance companies, "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of in-

8» 11 Op. Atty. Gen. 280. see also the motion for a rehearing,,

9 U. 8. V. New York Guarantee, which was denied, a. c. 107 U. S.

etc. Go. 8 Ben. 269, Fed. Cas. No. 1, 27 L. cd. 385, 2 Sup. Ct. Eep. 83. 15,872; U. 8. V. Brooklyn, etc. Rail- 10 U. S. Rev. Stat. § 3173 (U. S.

vmy, 14 Fed. 284; V. 8. v. Erie Rail- Comp. Stat. 1901, p. 2065) as amend-
vxiy Co. 24 Int. Rev. Eee. 76, Fed. ed by Act of October 3, 1913, II,
Cas. No. 15,056, reversed on an- subsection I. The notice should be
other point, s. u. 106 U. S. 327, 27 in Form 1045 printed in full supra^
L. ed. 151, 1 Sup. Ct. Rep. 293. And § 77, Tr. Reg. 196.

^ 88] INCE.EASE OF EETUKN. 381

sane, deceased, or insolvent persons ;" ^' and, as regards cor-
porations, joint-stock companies, associations and insurance
companies, omits the clause excepting "estates of insane, de-
ceased, or insolvent persons." By virtue of section 5292 of
the Eevised Statutes (U. S. Comp. Stat. 1901, p. 3604), the
Secretary of the Treasury is authorized to remit penalties. This
power is discretionary with him and is one of mercy. It cannot
therefore be reviewed either in the Court of Claims or any
other court. ^^

§ 88, Increase of return. "If the collector or deputy col-
lector have reason to believe that the amount of any income
returned is understated, he shall give due notice to the person
making the return to show cause why the amount of the return
should not be increased, and upon proof of the amount under-
stated may increase the same accordingly. If dissatisfied with
the decision of the collector, such person may submit the case,
with all the papers, to the Commissioner of Internal Reve-
nue for his decision, and may furnish sworn testimony of wit-
nesses to prove any relevant facts." ^ In a subsequent sub-
section, after providing for the reform of the returns made by
corporations, joint-stock companies or associations, and insur-
ance companies, it further provides: "All such returns shall
as received be transmitted forthwith by the collector to the
Commissioner of Internal Eevenue." * It might be argued
that this seems to deprive the collector of power to increase the
returns made by corporations, stock companies or associations,
before their transmission to the commissioner. The same sub-
division of this subsection provides: That "in cases of false
or fraudulent returns, * * * the Commissioner of In-
ternal Revenue shall, upon the discovery thereof, at any time
within three years after such return is due, make a return upon

11 Subsection E; Subsection G ten dollars from corporations which
(c). are organized for profit. In the

12 Dorsheimer v. V. 8. 7 Wall. 1G6, cases of all corporations not or-
175, 19 L. ed. 187, 190. The practice ganized for profit the specific pen-
of the Treasury Department is to alty was not asserted in the year
accept offers in compromise of the 1914, provided the required return
specific penalty for failure to file was filed before December 31, 1914.
returns within the period prescribed Records Corp. Tr. Co., p. 293.

by law in a minimum sum as fol- § 88. 1 Statute II, Subsection D.
Iowa: five dollars from individuals; 2 Subsection G. (e).

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information obtained as provided for in this section." Under similar language in the Corporation Tax Law of 1909 it was held: that such a return might be made by the Commissioner after the tax under the original return had been paid; that in determining the time, the first day should be excluded and the last included, so that a discovery made on March 2 in the third year after the return is due justified a new return by the commissioner, and that the new return might be made when the original return was made in good faith but was false through a mistake of law.' It was said that where the discovery was made within three years, the assessment might be subsequently corrected.*

The same subsection further provides: that "the returns together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue." ' This grants such commissioner the power to make additions to the return.*

The Act of 1894 provided that the decision of the collector in the matters intrusted to his jurisdiction, "unless reversed by the Commissioner of Internal Revenue, shall be final." " The omission of this clause from the present act may be deemed to show the intent of Congress - that his decision, even when not set aside by the commissioner, may be reviewed by the courts.

8 Ibid. « Ihid.

4 Subsection G (d). 7 Act of August 28, 1894, Sec. 29.

^miot Nat. Bank v. QUI (D.
Mass.) 210 Fed. 933, Bingham, C. J.

CHAPTEK VI.

ASSESSMENT.

§ 89. Assessment list. The Treasury Eegulations direct the transmission by the collectors of the assessment lists as follows: "The annual returns will be forwarded by collectors by registered mail to the Commissioner of Internal Revenue with the list for the month in which the returns are filed. Collectors must provide that said returns and all forms relating thereto are securely sealed in envelops or packages before forwarding the same." *

"All income taxes found to be due will be reported by collectors on their assessment lists, Form 23-A in the case of cor-

porations, and on Form 23-B in the case of individuals and withholding agents." *

"The names of corporations subject to tax will be listed on Form 23-A,' according to their designated class, and in alpha-

§ 89. ITr. Reg. 24.

«Tr. Reg. 187.

3 Form 23A (Front Sheet) .-Prescribed November 13, 1913.

UNITED STATES INTERNAL REVENUE.

(Original or Duplicate.)

SPECIAL EXCISE AND INCOME TAX ASSESSMENT LIST

Of Corporations, Joint Stock Companies, Associations, etc., taxable under Section 38, Act of August 5, 1909, and Section 2, Act of October 3, 1913,

in the Collection District of , for the

month of , 191

Collector.

Received for by the Collector , 191

This form must never be folded. When transmitted by mail it should be rolled about a stick so that the form will not be mutilated. Special care should be taken to avoid tearing or injuring the binding edge.

Instructions for the Preparation, etc., of Forms 23A and 58A.

These instructions supersede all previous instructions in conflict therewith and must be closely followed to insure uniform reports from the various Collection Districts.

General Instructions.

On or before the 10th of each month collectors will prepare and forward to the Commissioner of Internal Revenue, for the preceding month, on this combined Form 23A and 58A, a list of corporations, joint-stock companies, etc., taxable under Section 38 of the act of August 5, 1909, and section 2, act of October 3, 1913. This list must be in duplicate, and should be prepared on the typewriter when possible (a triplicate copy may also be prepared if the collector so desires).

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Only such corporations whose returns show a taxable income will be reported on this form.

Special Instructions - Form 23A.

On Form 23A will be entered in alphabetical order, by classes, the name, location, etc., of each corporation whose return (showing a taxable income) has been received during the previous month. Where, owing to the large number of returns received during any month, a portion only of such returns can be examined prior to the date on which the list for that month should be rendered, the returns not so examined should be listed the following month. But all returns received should be listed and forwarded to the Commissioner as soon as possible, so as to insure their early re-examination, as the acts above named require that all such assessments shall be made and the corporation, etc., notified of the amount assessed, when its return is filed in time, not less than 30 days before the tax is due.

In preparing their lists collectors will carefully enter in columns 1, 2, 3, 4, 5, 6, and 7 the information therein called for. In column 4 the collector will use care in stating the close of the fiscal year for which the return is rendered, to enable this office to determine from the list which of the corporations have taken advantage of the provisions of subparagraph 6 of paragraph G, section 2, act of October 3, 1913. This information is necessary in determining whether 50 per cent additional tax has been incurred, and fixes the date when the tax assessed is due. Under the head of "Basis of Assessment" (column 6) reference will be made to "Original" or "Amended" returns, or to additional tax reported by revenue agents, etc., as the case may be. No entries will be made by collector in columns 8, 9, 10, and 16 of the list. Before sending the list to the Commissioner the collector will enter in column 11 of the duplicate list (and original list if so desired) the amount of taxes paid during the month (advance collections) for which the list is rendered, and in columns 12, 13, and 15 the necessary data to complete the list. All advance collections reported on each page of the list should be added, and the amounts carried forward to the last page, where the total, including the amount reported on Form 58, will be entered on the "Totals" line in column 11.

The words "Amount of Form 58" should also be entered in columns 5 and 6, line 35.

In listing the names of corporations several blank lines should be left after each initial letter, in each class, so that the names of other corporations found subject to tax may be added, in regular alphabetical order, before the list is returned to the collector.

Where the proposed assessment against any corporation includes the tax for two or more calendar years a separate line should be used in reporting the tax for each year. In rendering lists on which no tax is reported for assessment collectors will enter on line 1, column 2, of inside page of such lists, the words "No returns received during the month."

Receipts.

A separate receipt on Form 476 for advance collections of corporation taxes, reported on the lists for March, June, September, and December, should be furnished. Such receipt will include all collections made during the month on Forms 23A and 58A for that month, and will be dated and signed by the collector and attached to the original list before said list is forwarded to the Commissioner. If any list is not received by the collector in time to be receipted for by him before the close of the quarter he will immediately, at the end of the quarter, forward to the Commissioner a receipt. Form 476, covering the amount collected on such list during the quarter, as under the circumstances he is chargeable in his quarterly account with so much of said list as has been collected and deposited by him. The collector will not combine the collections on two lists in the same Form 476, but will make a separate receipt on that form

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ASSESSMENT LIST.

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for each list. If the collector promptly forwards his lists as instructed there will seldom be any necessity for a receipt on Form 476, except for the months closing the quarter and when a new bond is given.

When assessments are made by the Commissioner receipts on Form 2.3i in duplicate for the full amount of the lists, less amount receipted for on Form 476, if any, will be prepared and inclosed with the original list. These receipts should be dated and signed by the collector, one of said receipts to be attached to his list and the other to be promptly returned to the Commissioner.

Notice or Assessment.

Upon receipt of the original list from the Commissioner a preliminary notice of assessment. Form 647, will at once be sent to each corporation, etc., assessed thereon, provided the same can be done within the 120 days from the date when its return was due. All corporations that have not paid the tax assessed for the current tax year on or before the end of 180 days from the close of their fiscal year will be at once served with notice on Form 17, which will be followed (should the taxes remain unpaid) by Forms 21 and 69, as in the case of other assessed and unpaid taxes. For all taxes assessed on any list for a prior tax year, and for the current tax year when the proper return is not filed within the 60 days after the close of the chosen fiscal year. Form 17 will immediately be issued and the taxes will be collected in the manner prescribed for other assessed taxes. In case the corporation assessed makes its tax return within 60 days after the close of its fiscal year, then the preliminary notice will give the date of payment 120 days from the date when said return was due, or, in other words, 180 days after the close of

its fiscal year. The dates on which notices, Forms 647 and 17, are issued will be entered in columns 10J and 11, respectively.

All payments or abatements made subsequent to the rendition of lists by collectors will be at once noted in the appropriate columns of the original list.

Form 58A.

The names entered in column 1 of Form 58A will be arranged alphabetically irrespective of class. In columns 1 and 2 the entries will be similar to entries in same columns on Form 23A. In column 3, item 1, will be entered "Offer in compromise, failure to file return in time for

tax year ending ." Items 2, 3, and 4, after showing on what account

paid, should refer to list, folio, and line where assessed. Under item 5, in column 1, will be entered the name of the owner of the property sold, and in column 3 should be given the reason of the sale, referring to the assessment, if any, by list, folio, and line, the gross proceeds, the expenses

of sale, the amount applied to the payment of the tax if assessed, the amount of 5 per cent penalty and interest, and the surplus proceeds returnable to the owner. All of these amounts, except that applied to tax, should be carried to column 6 in separate items. In such sales deduct and apply the amounts in the order named. Costs must always be charged on Forms 58A and must not be paid out of the proceeds of the sale. Under item 6, in column 1, enter the name of the corporation on whose account the money is paid; in column 3 give a concise description of the specified violation, as "failure to file return," or "recovery of tax assessed," giving list, folio and line where assessed, and finally give the name of the court oflScer who paid the money and to whom receipt, Form 540, was issued. Costs should be entered on a separate line and itemized as on Form 540.

If more than one page of Form 58A is required the collector will use the continuation sheet.

If the above instructions are not plain, or are not understood, please ask for further instructions. Collectors will be expected to follow these instructions implicitly, and the lists will be examined with them in view; therefore, failure to comply may cause improper action to be taken.
Foster Income Tax. - 25.

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ASSESSMJiXT.

[S 89

Folio 1. Total No. folios in list,

Form 23A (First Page). - Prescribed November 13, 1913.

ALPHABETICAL LIST of Corporations, Joint Stock Companies,

August 5, 1909, and Sec. 2, Act of October 3, 1913, in the

District for Assessment, and the amount assessed against each by
said District, for Collection, for the Month of , 19;

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Line No.
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Line No.
Line No.
Line No.
Line No.

ADDITIONAL. REMARKS BY COLLECTOR.

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ASSESSMENT LIST.

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Folio Total No. folios in list,

Form 23A (Inside Sheet). - Prescribed November 13, 1913.
Associations, etc., liable to Special Excise Tax undei Sec. 38, Act of
Collection District of , reported by the Collector of said
the Commissioner of Internal Revenue, and certified to the Collector of

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ASSESSMENT.

[§ 89

Folio Total No. folios in list,

Form 23A (Inside Sheet).— Prescribed November 13, 1913.

ALPHABETICAL LIST of Corporations, Joint Stock Companies,

August 5, 1909, and Sec. 2, Act of October 3, 1913, in the

District for Assessment, and the amount assessed against each by
said District, for Collection, for the Month of , 191

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ASSESSMESTT LIST.

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Folio Total No. folios in list,

Form 23A (Last Page). - Prescribed November 13, 1913.

Associations, etc., liable to Special Excise Tax under Sec. 38, Act of

Collection District of , reported by the Collector of said

the Commissioner of Internal Revenue, and certified to the Collector of

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I hereby certify that each of the corporations, joint stock companies, associations, etc., above reported by me is liable to a tax of 1 per cent of the net

income set opposite its name.

Dated at _____, Collector of Internal Revenue.

Dist. of _____

191 _____

I hereby certify that, as authorized and required by law, I have made Inquiries, determinations, and assessments of the taxes specified in the foregoing list, and find to be due the amounts specified in columns 8 and 9 of said list from the corporations, joint stock companies, associations, etc., taxable under Section 38 of the act of August 5, 1909, and Section 2, act of October 3, 1913, against whose names said amounts are respectively placed.

At _____ Revenue Office,

Washington 191 _____ Commissioner.

•390

ASSESSMENT.

Page 1.

Form 58A. — Prescribed November 13, 1913.

United States Internal Revenue.
LIST OF UNASSESSABLE COLLECTIONS.

Alphabetical List of Corporations, Joint Stock Companies, Associations, etc., in the District of from which the following-described Moneys have been Collected, and the Amounts so Collected in each case, during the Month of , 191

1. Amounts received as offers in compromise.
2. Five per cent penalties and interest collected.
3. All excess collections, including unassessable taxes.
4. All taxes paid after abatement.
5. Surplus proceeds and costs incident to sales under warrants of distraint.
6. All fines, penalties, judgments, and costs paid to the Collector by order of Court.

I, , Collector of the District of , do

hereby certify that the following Detailed List is complete, in every particular, and embraces all collections made in said District, from the sources enumerated above, during the above-specified period.

Dated this day of , 191 Collector.

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(For instructions relative to the preparation of Form 58A see first page of cover.)

§ 89] assessment list, 391

alphabetical order as to each class. Names of individuals subject to tax will be listed on Form 23-B,* alphabetically,

4 Form 23B (Front Sheet). - Prescribed December 5, 1913.
UNITED STATES INTERNAL REVENUE,

(Original or Duplicate.)

Income Tax Assessment List of

INDIVIDUALS AND WITHHOLDING AGENTS,

Liable to Income Tax under Section 2, act of October 3, 1913, in the
Collection District of , for the Month of , 191. .

Collector.

Received for by the Collector, , 191

This form must never be folded. When transmitted by mail it should be rolled about a stick so that the form will not be mutilated. Special care should be taken to avoid tearing or injuring the binding edge.

Instructions for the preparation, etc., of Forms 23B and 58B.

These instructions supersede all previous instructions in conflict therewith and must be closely followed to insure uniform reports from the various Collection Districts.

General Instructions.

Beginning with the January, 1914, list, this Form 23B will be used exclusively for listing individuals and withholding agents subject to tax under Section 2 of the act of October 3, 1913; in the case of individuals, for personal income tax, and in case of withholding agents, for the normal income tax withheld by them at the source. Care will be taken to report such items only on this list, as corporation income tax will be reported on Form 23A.

This list will be prepared in duplicate (and triplicate, if the collector so desires) on the typewriter, when possible, both original and duplicate to be forwarded, with all returns listed, on or before the 10th of the month following the month for which the list is rendered. It is very necessary that these lists be forwarded to the Commissioner not later than above specified, in order that the accompanying returns may be examined, assessments made, and the original list returned in time to be receipted for by the collector before the close of the month. It may not be possible to list all returns on hand on the February and March lists, before such lists are to be forwarded to the Commissioner, and in such case the omitted names will be entered on the next subsequent list.

All returns received on or before March 1 must, however, be listed not later than the April list, in order that a preliminary notice of assessment (Form 647) may issue on or before June 1. To avoid perplexing errors, duplication of receipts and delays in making assessments, the above should be strictly observed.

392 ASSESSMENT. [§ 89

Special Instructions, Form 23B.

The blanks at the top of each folio must be filled in. The lines of this form have been especially ruled for typewriter spacing, and the single sheets furnished admit of a number of clerks listing at the same time and afterward assembling these sheets. Care should be taken to avoid mutilating the binding edge. In typewriting, should there be a tendency to tear the tips, the binding edge of the sheet may be protected by inserting the same in a narrow slip of paper folded lengthwise before passing the same under the platen of the machine.

In column 1 the collector will enter the names, alphabetically, of individuals subject to tax, leaving several lines after each letter on which other names may be entered by the Commissioner. The names of withholding agents will not be reported on Form 23B until the lists for the months of March and April are made up, or when such withholding agents discontinue business, or when the amount withheld is paid, in which case the amount paid must be immediately accounted for by the collector. The April list must be promptly forwarded in order that the original may be returned to the collector in time to give notice of assessment on or before June 1.

In preparing their lists collectors will carefully enter in columns 2, 3, 4, 5, 6, and 7 the information therein called for. Under the head of "Basis of Assessment" (column 6) reference will be made to "Original" or "Amended" returns, or to additional tax reported by revenue agents, etc., as the case may be. No entries will be made by collector in columns 8, 9, 10, and 16 of the list. Before sending the list to the Commissioner the collector will enter in column 11 the amount of taxes paid during the month (advance collections) for which the list is rendered, and in columns 12, 13, and 15 the necessary data to complete the list. All advance collections reported on each page of the list should be added, and the amounts carried forward to the last page, where the total, including the amount reported on Form 58, will be entered on the total line in column 11.

The words "Amount of Form 58" should also be written on the left half of the folio, line 35, and the amount in column 11.

In listing the names of individuals and withholding agents several blank lines should be left after each initial letter, so that the names of other individuals and withholding agents found subject to tax may be added, in regular alphabetical order, before the list is returned to the collector.

Where the proposed assessment against any individuals and withholding agents includes the tax for two or more calendar years a separate line should be used in reporting the tax for each year. In rendering lists on which no tax is reported for assessment, collectors will enter on line 1, column 2, of inside page of such lists the words "No returns received during the month."

Receipts.

A separate receipt on Form 476 for advance collections (collections made during the month for which the list is rendered) of income tax, reported on Forms 23B "for March, June, September, and December, should be furnished. Such receipt will include all collections made during the month and reported on Forms 23B and 58B for that month, and will be dated and signed by the collector and attached to the original list before said list is forwarded to the Commissioner. If any list is not returned by the Commissioner in time to be receipted for by the collector before the close of the quarter, he will immediately, at the end of the quarter, forward to the Commissioner a receipt, Form 476, covering the amount collected on such list during the quarter, as under the circumstances he is

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ASSESSMENT LIST. 393

chargeable in his quarterly account with so much of said list as has been collected and deposited by him. The collector will not combine the collections on two lists in the same Form 476, but will make a separate receipt on that form for each list. If the collector promptly forwards his lists as instructed, there will seldom be any necessity for a receipt on Form 476, except for the months closing the quarter and when a new bond is given.

When assessments are made by the Commissioner, receipts on Form 23J in duplicate for the full amount of the lists, less amount receipted for on Form 476, if any, will be prepared and inclosed with the original list. These receipts should be dated and signed by the collector, one of said receipts to be attached to his list and the other to be promptly returned to the Commissioner.

Notice of Assessment.

Upon receipt of the Form 23B from the Commissioner a preliminary

notice of assessment. Form 647, will at once be sent to each individual and withholding agent assessed thereon, provided the same can be done prior to June 30. All individuals and withholding agents that have not paid the tax assessed for the current tax year on or before June 30 will be at once served with notice on Form 17, which will be followed (should the taxes remain unpaid) by Forms 21 and 69, as in the case of other assessed and unpaid taxes. For all taxes assessed on any list for a prior tax year, and for the current tax year when the list is received too late to issue Form 647 before June 30, or when the return for any reason is not received on or before March 1 of each year. Form 17 will immediately be issued and the taxes will be collected in the manner prescribed for other assessed taxes. The dates on which notices. Forms 647 and 17, are issued, will be entered in columns 10J and 11, respectively.

All payments or abatements made subsequent to the rendition of lists by collectors will be at once noted in the appropriate columns of the original list.

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The names entered in column 1 of Form 58B will be arranged alphabetically. In columns 1 and 2 the entries will be similar to entries in same columns on Form 23B. In column 3, item 1, will be entered "Offer

in compromise, failure to file return in time for tax year ." Items

2, 3, and 4, after showing on what account paid, should refer to list, folio, and line where assessed. Under item 5 enter costs and surplus proceeds on separate lines, referring in column 3 to list, folio, and line where assessed. In distraint sales the costs are first deducted from the gross proceeds, then the tax due, then the 5 per cent penalty and interest, and the amount left is surplus proceeds and must be entered on Form 58B.

Under item 6, in column 1, enter the name of the person on whose account the money is paid; in column 3 give a concise description of the specific violation, as "failure to file return," or "recovery of tax assessed," giving list, folio, and line where assessed, and finally give the name of the court officer who paid the money and to whom receipt. Form 540, was issued. Costs should be entered on a separate line and itemized as on Form 540.

If more than one page of Form 58 is necessary, the collector will use the continuation sheet, Form 58, which form has been so arranged that it may be used with all of the lists, Forms 23, 23A, and 23B.

If the above instructions are not plain or are not understood, please ask for further instructions. Collectors will be expected to follow these instructions implicitly, and the lists will be examined with them in view therefore, failure to comply may cause improper action to be taken.

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ASSESSMENT.

[§ 89

Folio 1. Total No. folios in list,

Form 23B (First Page) .-Prescribed December 5, 1913.

ALPHABETICAL LIST of Individuals and Withholding Agents, liable to
Collection District of , reported by the Collector of
Commissioner of Internal Revenue, and certified to the Collector of

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ADDITIONAL KBMABKS BY COLLECTOB.

§ 89]

ASSESSMENT LIST.

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Folio Total No. folios In list,

Form 23B (Inside Sheet). - ^Prescribed December 5, 1913.

Income Tax under Sec. 2, Act of October 3, 1913, in the

said District for Assessment, and the amount assessed against each by the
said District for Collection, for the Month of ,191

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396

ASSESSMENT.

[§ 89

Folio Total No. folios in list,

Form 23B (Inside Sheet). - Prescribed December 5, 1913.

ALPHABETICAL LIST of Individuals and Withholding Agents, liable to

Collection District of reported by the Collector

by the Commissioner of Internal Revenue, and certified to the Collector

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ASSESSMENT LIST.

397

Folio Total No. folios in list,

Form 23B (Last Page) .-Prescribed December 5, 1913.

Income Tax under Sec. 2, Act of October 3, 1913 in the,

of said District for Assessment, and the amount assessed against each
of said .District for Collection, for the Month of , 191

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I hereby certify
reported by me, is

Dated at

that each of the individuals and withholding agents, above
liable to the tax on the net income set opposite his name.

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Collector of Internal Reveaae.
Dist. of

I hereby certify that, as authorized and required by law, I have made inquiries, determinations, and assessments of the taxes specified in the foregoing list and find the amounts specified in columns 8 and 9 of said list to be due from the Individuals and withholding agents, liable to tax under Section 2 of the act of October 3, 1913, against whose names said amounts are respectively placed.

Internal Revenue Office,
Washington 191 Commissioner

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ASSESSMENT.

[§ 8&

Page 1.

Form o8B. — Prescribed December 5, 1913.

United States Internal Revenue.

LIST OF UNASSESSABLE COLLECTIONS.

ALPHABETICAL LIST of Individuals and Withholding Agents, in the

District of from which the following-described

Moneys have been Collected, and the Amounts so Collected in each case, during the Month of , 191

1. Amounts received as offers in compromise.
2. Five per cent penalties and interest collected.
3. All excess collections, including unassessable taxes.
4. All taxes paid after abatement.
5. Surplus proceeds and costs incident to sales under warrants of distraint.
6. All fines, penalties, judgments, and costs paid to the Collector by order

of Court.

I, , Collector of the District of , do

hereby certify that the following Detailed List is complete, in every particular, and embraces all collections made in said District, from the sources enumerated above, during the above-specified period.

Dated this day of , 191 , Collector.

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(For instructions relative to the preparation of Form .'58 see title page of Form 23BJ

§ 89] ASSESSMENT LIST. 399

without reference to class or rate of tax. Following such names there will be listed, alphabetically, the names of all withholding or licensed collecting agents, and the aggregate amount of tax withheld by each, as shown by the annual returns rendered by them. An assessment against each person, firm or company, from whose income the tax has been so withheld, will be unnecessary in such cases." *

"To avoid, as far as possible, the assessment of taxes as to which claims for exemption or deduction may be filed under article 33, collectors will delay reporting for assessment taxes remaining in the hands of withholding agents, until the annual reports of such agents, which must be filed not later than March 1 in each year, are received." ^

"All returns of income, whether of individuals or corporations, should be forwarded with the assessment list rendered." '

"Monthly and annual returns of withholding agents (including those of licensed agents) as to interest payments and the annual returns of withholding agents withholding tax on wages, salaries, etc., will be made in duplicate, one copy of which will be retained by the collector in his office and one copy transmitted to the Commissioner of Internal Revenue. Annual returns of withholding agents (including those of licensed agents) as to interest payments, and returns of withholding agents as to wages, salaries, etc., and of fiduciaries will be forwarded by the collector with his list. Form 23-B, on which the tax withheld is reported for assessment." *

s Tr. Reg. 188. art. 192 has been annulled by T. D.

6 Tr. Reg. 189. 2024.

TTr. Reg. 192., The remainder of «Tr. Reg. 193.

400 ASSESSMEJTT. [§ 89

"All certificates of exemption or deductions, filed by or on behalf of persons subject to tax, will be forwarded by the collector as soon as received ; and all such certificates, reports, and returns, before being transmitted to the commissioner, will have stamped thereon the name and number of the district; will be arranged (unfolded) in alphabetical order and, in the case of corporations, according to the designated class to which they belong. Care should be taken to have all such papers, when so arranged, carefully secured by cord or other fastening, so as to insure their receipt in like order. This is especially necessary in view of the large number of like papers which will be forwarded from the various districts.*

"In order that assessment lists may be promptly prepared and forwarded, collectors will see that all reports and returns to be listed are examined as received, and that no delay occurs in this branch of the work. Special diligence in this matter is necessary, as sufficient time must be given for the re-examination of such returns in the commissioner's office before assessment is made. The forwarding of assessment lists, however, should in no case be delayed, beyond the time allowed, on account of unexamined returns, as such returns can be examined and reported on a subsequent list. As the law limits the time in which these assessments are to be made and notice of assessment given, collectors will assign to this work all available force in their respective offices." "

"Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on

9 Tr. Keg. 194. 1" Tr. Eeg. 195.

§ 90] ASSESSMENT. 401

Form 1045, should in each case be sent to the delinquent.
(For authorized extension of time, see articles 23 and 173.) " ^*

§ 90. Assessment. "The assessments are made by the Commissioner of Internal Revenue." ^ The assessment of the tax is different in its nature from that under the tax laws which usually prevail in the different states.

As Mr. Justice Blatchford says: "A scheme of taxation like that found in the Federal statutes, where there is imposed by the statute a fixed tax by a percentage on an amount of money the elements for ascertaining which are definitely designated in the statute, or a fixed tax on a given amount on the designated object or subject of tax, is a very different scheme of taxation from that which prevails generally in the statutes where power is confided to public officers to value property, real or personal, and to fix the percentage of the tax thereon." ' The amount of income being ascertained, the tax is a mere matter of numerical calculation. The act of assessment, however, includes probably the allowance of deductions and some matters of discretion, such as, perhaps, a review of the imposition of a penalty by the collector even when there has been no formal appeal.

The statute states explicitly "that all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of reversal or neglect to make such return and in cases of false or fraudulent returns." '

iiTr. Reg. 196. 8 Subsections E, G (e). Tr. Reg.

§ 90. 1 Act of Oct. 3, 1913, II, E. 25.
a U. S. V. Tildm, 24 Int. Key. Eee.
g9, 103, Fed. Ca, a. No. 16,519.

Foster Income Tax. - 2S.

402 ARSESSMEJft. [§ 90

It was held in Alabama that when the taxpayer refused to make the return required by law, there was no remedy to correct the mistake of a state assessor, honestly made, when determining the annual income, and that to save his rights the taxpayer should make a proper return under protest.*

The effect of the assessment after it is made is not specifically set forth in the act. There is no provision that it shall be conclusive on the taxpayer. It seems to be settled that it is not a bar to a suit by the Government to recover taxes alleged to be due over and above the assessment.* l^either is

it necessary in order to fix the tax, because the Government may maintain an action of debt for the tax even without an assessment. Mr. Justice Gray said in a case, under the act of June 30th, 1864, as amended, that "an assessment is not required by the act, nor, if made, conclusive upon either party, and * * * in an action to recover the tax the controlling question is not what has been assessed but what is by law due." * The question does not seem to have been directly presented under the old laws whether the assessment is conclusive upon the taxpayer, but the practice seems unquestionably to have been to allow the validity of the assessment to be questioned in a suit at law, and this is impliedly decided in all suits in which a taxpayer recovered judgment for taxes illegally collected from him.

Section 3226 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2088) provides that "no suit shall be maintained in

* Lott v. Hubbard, 44 Ala. 593. After the assessor had transmitted the list to the collector, he was functus officio, and could not thereafter re-assess or examine the taxpayer. In Little Miami, etc. R. R. v. U. S., 108 U. S. 277, 27 L. ed. 724, 2 Sup. Ct. Rep. 627; s. c., U. S. v. Little Miami, etc. Railroad Co., 1 Fed. 700; re Brown, 3 Int. Rev. Rec. 134, Fed. King v. U. S., 17 U. S. 229, 25 L. Cas. No. 1,977. This decision was overruled in U. S. v. Tilden, 24 Int. Rev. Rec. 373. See U. S. v. Tilden, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519, Internal Revenue. 3 Int. Rev. Rec. 138, 139, 8 Sup. Ct. Rep. 77. It and imposed his duties upon the Commissioner of Internal Revenue.

^ 90] ASSESSMENT.

403

-any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected * * * until appeal shall have been duly made to the Commissioner

of Internal Revenue." ' But it has been decided that in spite of that regulation a defendant in a suit brought by the Government for arrears of taxes may question the legality of an assessment, although he did not appeal from it.* It was held that the burden is on the Government after long acquiescence (in that case 12 years) to show that the assessment was incorrect.' In another case, Mr. Justice Beadley said: "The suit thus prohibited (by section 3226) is a suit brought by the person taxed to recover back a tax illegally assessed and collected. This is different from the case now under consideration, which is a suit brought by the Government for collecting the tax, and the person taxed (together with his sureties) is defendant instead of plaintiff. No statute is cited to show that he cannot when thus sued set up the defense that the tax was illegally assessed, although he may not have appealed to the commissioner.

"Is he precluded by any general rule of law from setting up such a defense ? Has an assessment of a tax so far the force and effect of a judicial sentence that it cannot be attacked collaterally, but only by some direct proceeding, such as appeal or certiorari, for setting it aside ?

"It is undoubtedly true that the decision of an assessor or board of assessors, like those of all other administrative commissioners, are of a quasi-judicial character and cannot be questioned collaterally when made within the scope of their jurisdiction ; but if they assess persons, property, or operations not taxable, such assessment is illegal and cannot form the basis of an action at law for the collection of the tax, however efficacious it may be for the protection of ministerial officers charged with the duty of actual collection by virtue of a regular warrant or authority therefor. When the government elects to resort to the aid of the courts, it must abide by the legality of the tax. When it follows the statute, its officers

7 See *infra*, § 1]5. 9 17. S. v. Philadelphia & Read-

8 *Clinkenheard v. V. S.* 21 Wall, *ing R. R. & Co.* 123 U. S. 113, 31 L. 65, 22 L. ed. 477; 17. 8. v. Phila- ed. 138, 8 Sup. Ct. Rep. 77. ■delphia, do. Railroad, 123 U. S. 113.

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have the protection of the statute and parties must comply with the requirements thereof before they can prosecute as plaintiffs." ^^ In accordance with this opinion, it was held that a void assessment by the commissioner and proceedings thereunder could be attacked collaterally. In this case the action was between the taxpayer and the insurance company, the defense being that under a clause in the policy to the effect that if any change should take place in the possession of the property by legal process, it should avoid the policy, a seizure of the insured property under the internal revenue law had avoided the policy. The plaintiff in that case was allowed to show

that the assessment was void and the seizure of his property thereunder unauthorized.^

Conceding that the assessment is binding as to the taxpayer who is a party to it, it is, nevertheless, not binding as to those who were not parties to it and were not directly affected by it.^"

Section 3186 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2073) provides as follows: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person." ** While, as has been seen, the tax is sufficiently fixed without assessment to permit an action of debt, nevertheless, it is held that until there has been an assessment it is not sufficiently fixed so as to create a lien under the foregoing section of the Revised Statutes."

Section 3184 provides as follows: "Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay

10 *Glinkenheard v. V. 8. 21 Wall. W XJ. 8. v. Rindskopf*, 8 Blss. 507, 65, 70, 22 L. ed. 477, 478. Fed. Cas. No. 16,166.

IT- Runkle v. Citizens' Inawrnce . 13 see infra, § 106. Co. 6 Fed. 143. See also *V. 8. v. 1* V. 8. v. Pacific Rmlroad*, 1 Fed. Philadelphia & Reading R. R. 123 97, and see s. c. 4 Dill. 66, Fed. Cas. U. S. 113, 31 L. ed. 138, 8 Sup. Ct. No. 15,983; and s. c. 4 Dill. 71, Fed. Rep. 77. Cas. No. 15,984; *BroiCT* T. Goodwin*,

7§ K. T. 409.

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any taxes stated herein, to be left at his dwelling or usual place of business or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of the taxes and interest at the rate of one per centum a month." The notice required by the foregoing section is not a part of the assessment, and the taxpayer is liable to the tax even though he received no such notice." Section 3182 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2071) provides: "Whenever it is ascertained that any list which has been or shall be delivered to any collector, is imperfect or incomplete, in consequence of the omission of the name of any person liable to tax, or in consequence of any omission, or understatement, or undervaluation, or false or

fraudulent statement contained in any return made by any person liable to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such person so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed." ^°

15 T.J. 8. V. Bristow, 20 Fed. 378. defendant at its principal office,

16 Under the Corporation Tax Law with the return address of the collector of 1909 it was held: that a notice letter upon the envelope, upon proof of assessment served by mail was that it was not returned it should be sufficient; and that where sent in a registered envelope it should be presumed that it was received and the burden of proof to the contrary is on the taxpayer.

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A reassessment may be made under the foregoing section, although the tax was paid under the first assessment.' Under former statute, the question was raised, but not decided, whether a reassessment could be had when the first assessment was erroneous, not by reason of any default on the part of the taxpayer, but by reason of the assessor's mistake. * There is a dictum to the effect that a reassessment made within the statutory period of fifteen months may include taxes on income for a period of more than fifteen months before.* The lapse of that period does not prevent an action of debt for taxes that are still unpaid ; " but it does prevent a collection of the taxes by the specific remedies provided by Chapter II. of Title XXXV. of the Revised Statutes (U. S. Comp. Stat. 1901, p. 2063)."

§ 91. Hearing upon the assessment. As said above, the assessment of the tax, after the returns are in, is made by the Commissioner of Internal Revenue. It is made after the returns and lists of the various collectors have been forwarded to him. It must be made and notice given on or before the first day of June, and an interval until the thirtieth day of June is allowed before payment is required.' Whether the taxpayer is entitled to a hearing is not declared.

Under the earlier acts there were two officers: the collector and the assessor, whose duties were fundamentally distinct. It was the assessor's office to make the assessment, and appeals from his decision to the commissioner were entertained perhaps

as a matter of grace, for there seems to have been no statutory authority, for them. At the present time, the office of assessor having been abolished, there is no room for a technical appeal from the assessment itself, because the act of assessment and the act of revision can be performed only by the same official.

contrary rested upon the corpora- But see *Bandelet v. Smith*, 18 Wall, tion. V. S. V. General Inspection 642, 21 L. ed. 758. and *Loading Co. (D. N. J.)* 204 Fed. M U. 8. v. *Little Miami, etc. Rail-* 657, Cross, J. road, 1 Fed. 700.

17 *Doll V. Evans*, 9 Phila. 364. 21 /,, re *Archer*, 9 Ben. 427, Fed.

1» *Daniels v. Tarhow*, 9 Blatehf. Cas. No. 506. 176, Fed. Cas. No. 3,568. § 91. 1 Act of October 3, 1913.

19 cr. S. V. *O'Neill*, 19 Fed. 567. subsection F.

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The appeal from the acts of the collector and his deputy in increasing the return has been previously considered.*

After the assessment has been made, a list of the taxes assessed is returned to the tax collector, whose duty then is to immediately proceed to collect the tax.* The act of assessment has been said to be a ^wosi- judicial function.*

Many questions might be raised after the assessment or at the time of making it which would not be included in the appeal specifically granted in the act.' The questions which are there provided for relate to the amount of the list, that is, as to the right of the collector to increase the list. Obviously, therefore, it is or should be the right of the taxpayer to have a hearing on those questions before he pays the tax, and it undoubtedly will be allowed by the department at some time or other in the course of the proceedings.

What the effect of a hearing would be is perhaps doubtful. It has been suggested that the repeal of the law appointing assessors was impliedly a repeal of a section of the Revised Statutes requiring an appeal after payment of the tax and before suit is commenced on the ground that the commissioner having already made and rendered his decision as to the assessment, "it would seem to be a mockery" to make a second application to reverse his decision after the tax is paid.'

2 § 88, svpra. era, 3 *Hughes*, 239, 243, Fed. Cas. No.

8U. S. Rev. Stat. § 3184 (U. S. 15,846. See also *Sam, Francisco Sav.*

Comp. Stat. 1901, p. 2072). *Union v. Gary*, 17 Int. Rev. Rec. 109,

* CUnkenbeard v. V. 8. 21 Wall. Fed. Cas. No. 12,317, affirmed on 65, 70, 22 L. ed. 477, 478. another point in Gary v. San Fran- SAct of August 28, 1894, § 29; Cisco Savings &c. Society, 22 Wall, supra, § 74. 38, 22 L. ed. 779.
< Judges Hughes in V. S. v. My- "

CHAPTEK VII.

PAYMENT.

§ 92. Payers of the tax. The payment must he made by the recipient of the income ^ or by the person who collects the same in trust for him,* or in certain cases by his debtor.*

§ 93. Time of pajmient. After the tax has been assessed and all questions raised upon the assessment have been decided by the commissioner, it is the duty of the taxpayer to pay the tax. Payment of the tax is made either by the recipient of the income subject thereto, or, in certain specified cases, by the person authorized to deduct the same at the source.'

The statute provides that assessments against individuals shall be paid on or before the thirtieth of June, except when the commissioner makes a return, when the assessment must be paid immediately upon notification of the amount thereof.^ The Treasury Regulations provide that payment by a person who is directed to deduct the tax at the source should not be made until after the time for filing claims for deductions and exemptions has expired.' That is not until after the expira- tion of January twenty-ninth of the current year.

The statute further provides: "that assessments against cor- porations, joint-stock companies or associations, and insurance companies, shall also be paid on or before the thirtieth day of June, unless a designation of a day for closing its fiscal year has been made by one or more of them. Any corporation, joint-stock company or association, or insurance company sub- ject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be

§ 92. 1 See infra, § 94. » Act of Oct. 3, 1913, II. Subsec-

z See infra, § 102. tion E.

3 See in/™, §§ 97-104. » T. D. 1965, March 23, 1914;

§ 93. I Infra, §§ 97-104. quoted in full infra, § 94.

entitled to have the tax payable by it computed -upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment ; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed." * In such a case the company so designated "shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment ;" ' except in cases of a return and assessment, made by the commissioner, when there has been a refusal or neglect to make a return, or the return is false or fraudulent.^ In the latter case, the assessment must be paid immediately upon notification of the amount thereof.''

Under former statutes, which provided that the tax- not, as under the present law, the assessment - should be paid on or before specified dates, it was held that taxes were due even without assessment, so that an action of debt could be maintained therefor by the Government'

If the taxpayer delays payment until after the first of July, the following provision of the statute takes effect: "To any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons." '

4 Stat. Act of Oct. 3, 1913, 11. Sub- » Subsection D; Subjection G (c).

section G (c). The last citation applies to corpora-

^ Hid. tion, joint-stock companies or asao-

^ Ibid. ciation, and insurance companies,

' Ibid. and it omits the provision excepting

8 Delaware R. Co. v. Prettyman, "estates of insane, deceased, or in-

17 Int. Rev. Rec. 99, Fed. Cas. No. solvent persons."

3,767; Doll v. Evans, 9 Phila. 364,

Fed. Cas. No. 3,969.

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The former statutes describe this imposition of interest as a penalty, but the present act contains no such denomination. The object of the omission was to obviate objections to the discovery. Interest does not begin to run until two contingencies have happened :

1. The arrival of the first day of July; and
2. The lapse of ten days after notice and demand.

§ 94. Manner of payment. Payment may be made in cash or by a certified check upon a national bank, a State bank or a trust company, located in the same city as the depository, where the collector is obligated to deposit the same.^ The collectors are also authorized to accept certified checks drawn on such corporations elsewhere, which can be cashed by the collectors without cost to the Government, provided that the depository will accept the same for deposit.*

The Act of March 2nd, 1911, as amended by the Act of March 3rd, 1913, provides: "That it shall be lawful for collecting officers to receive certified checks drawn on national and State banks and trust companies, during such time and under such regulations as the Secretary of the Treasury may prescribe, in payment for duties on imports, internal taxes, and all public dues, including special customs deposits." "No person, however, who may be indebted to the United States on account of duties on imports or internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this Act, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid ; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims what-

§94. iDept. Circular No. 11, 1911, p. 932) ; as amended by Act of March 27, 1913; T. D. 1990, Act of March 3, 1913, 37 Stat, at L. 733, March 2, 1911, 36 Stat, at L. 965, chap. 119.
chap. 191 (U. S. Comp. Stat. Supp. * Dept. Circular No. 11, T. D. 1990.

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soever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank." ' The Department has made the following

orders upon the subject: "Receivers and collectors of public moneys will, therefore, until further advised, accept in payment for all public dues of whatever description, certified checks when drawn in favor of the receiver, or collector, on national and State banks and trust companies located in the same city as the depository with which the deposits are to be made, and such 'out of town' certified checks as can be cashed by them without cost to the Government." * And in a subsequent ruling: "In the event that the depository will not accept for deposit 'out of town' certified checks, you are not required by law or regulations to accept such checks in payment of internal-revenue taxes. The law does not specifically authorize the acceptance of any form of exchange in payment of internal-revenue taxes other than currency and such certified checks as are specifically described in Department Circular Ho. 11, reference to which is made above. If, however, the collector elects to accept drafts or other mediums of exchange not specifically authorized by law, he does so at his own risk, but it may be said that, if the depository bank will accept such forms of exchange indorsed by the collector without recourse and issue therefor regular certificates of deposit, the monetary responsibility would appear to be shifted from the collector to the depository, inasmuch as the collector would be entitled to credit in his accounts by reason of the issuance of such certificates of deposit." *

§ 95. Payment under protest. The taxpayer may wish to preserve his rights to recover back his taxes after they are paid. This cannot be done if the payment is voluntary without any contemporary protest or notice of objection.* Since the

3 Act of March 2, 1911, 36 Stat, at 5 T. D. 1990, June 1, 1914, citing L. 965, chap. 191 (U. S. Comp. Stat. U. S. Rev. Stat. § 3211 (U. S. Comp. Supp. 1911, p. 932); Act of March Stat. 1901, p. 2083).

3, 1913, 37 Stat, at L. 733, chap. 119. § 95. 1 Chesebrough v. U. S. 192

* Dept. Circular, A. D. 1913, No. U. S. 253, 48 L. ed. 432, 24 Sup. Ct.

11. Rep. 262; V. 8. v. N. Y. & Cuba

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internal revenue laws contain no requirement that the protest shall be in writing, it has been said that an oral protest is sufficient.^ Where, however, the taxes were paid by a check marked on its face "Paid under protest," it was held that it did not appear that the fact of the protest came sufficiently to the knowledge of the commissioner, and that consequently it was insufficient.^ A payment not under duress would seem to be past recovery, although made under protest. The payment of an inheritance tax under protest, after a threat by the collector that unless promptly paid it would be collected with a

penalty and interest of one per cent a month, was held to be involuntary and to justify a suit against the internal revenue collector to recover the amount of the same.*

§ 96. Receipts. Whether the tax is paid under protest or not, the taxpayer is entitled to a receipt in accordance with the provisions of subsection J of the present act.

"That it shall be the duty of every collector of internal

Mail 8. S. Co. 200 U. S. 488, 50 L. ed. 569, 26 Sup. Ct. Rep. 327 ; Foa- claimed that it was not liable to the ter. Fed. Pr. 5th ed. § 96, p. 369. tax. ♦ * ♦ The only remaining 8 Wright v. Blakeslee, 101 U. S. 174, 179, 25 L. ed. 1048, 1049. See made a levy under sections 3107 and Stewart v. Barnes, 153 U. S. 456, 3205, Rev. Stat. (U. S. Comp. Stat. 459, 38 L. ed. 781, 783, 14 Sup. Ct. 1901, pp. 2029, 2080), in such. a way Rep. 849. Airst Realty Co. v. Max- that it was equivalent to a payment u-ell, (E. D. N. Y.) 206 Fed. 333, without protest. In the cases of City 334-336; per Chatfield, J.: "In of Philadelphia v. Collector iPhila- January, 1912, a corporation tax was delphia v. Dielil) 5 Wall. 720, 18 assessed, under the provisions of sec- L. ed. 614, Erslcine v. Van Arsdale, tion 38, Act of August 5, 1909, and, 15 Wall. 75, 21 L. ed. 63, and John- not being paid, a writ of distraint son & Johnson v. Herold, Collector was issued by the collector. Notifi- (C. C.) 161 Fed. 593, it is shown cation having been given the cor- that where the tax is paid under poration that the tax would be col- such circumstances that the terras lected by levy, sufficient funds were of protest are understood and suffi- in the hands of a representative of ciently expressed to be brought to the corporation, so that the deputy the notice of the government, and collector was able to count out and where the levy is used merely to pro- take the amount necessary to cover tect the government officer in acting the tax, viz., \$2,166.76. Thus the under the statute, an action may be writ did not have to be exhibited by maintained to recover the tax." the deputy. Verbal protest had been 3 Kings County Savings Institu- made to the collector prior to this tion v. Blair, 116 U. S. 200, 29 L. time, and a written notice of pro- ed. 657, 6 Sup. Ct. Rep. 353. test was given him at the time of * Simons v. U. S. 19 Ct. CI. 601. levy, in which notice the corporation See Hubbard v. Kelley, 8 W. Va. 46. stated that the tax was paid under

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revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full vwritten or printed receipt, express- ing the amount paid and the particular account for which such payment was made; and whenever such payment is made, such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall

be, sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt." *

§ 96. 1Act of October 3, 1913, subsection J.

CHAPTEE VIII.

DEDUCTION AT THE SOURCE.

§ 97. Deduction at the source in general. All persons, firms, companies, copartnerships, corporations, joint-stock companies, associations and insurance companies, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income of another person subject to tax, when such annual income is equal to at least \$3,000, must deduct and withhold from the debtor and pay to the Government the normal income tax upon the same, except in the case of dividends on capital stock, or from the net earnings of corporations or joint-stock companies and associations subject to a like tax.* The collector must, if required, give a separate receipt for each tax so paid by any debtor on account of payment made out of sums due separate creditors, in such form that the debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands, and such receipt is sufficient evidence in favor of the debtor to justify him in withholding the amount therein expressed from his next payment to his creditor.* The creditor upon giving the debtor a full written receipt acknowledging the payment of whatever sum is actually paid and accepting the amount of the tax paid as aforesaid, specifying the same as a further satisfaction of the debt, may require the surrender to him of such collector's receipt.' "The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals." * The additional tax ^ and

§ 97. 1Act of October 3, 1913, » Hid.

II. subsection D. * Ibid. Subsection E.

^ Ibid. Subsection J.; supra, § 96. ^ Ibid. Subsection A, subd. 2.

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the tax upon the net income of corporations, joint-stock companies or associations, and insurance companies, must be paid by the recipient upon the net income "from all sources." '

Stoppage at the source was first adopted in England in 1803 and has been there continued throughout the British legislation upon the subject. It has been copied in Italy and it has been said to be the chief cause of the success of the English system.' That was the reason for its insertion in the Act of Congress now under consideration, although it was adopted

S Ibid. Subsection G (a).

V 43 George III., 122.

8 See the two reports of the select committee on the Income and Property Tax, together with the minutes of evidence, both published in London in 1852 Seligman's Income Tax, 146, 216. Cf. §§ 3, 6, Supra.

» "The question has been asked, Why does the new law contain the method of collecting a substantial portion of the tax at the source of the income? The law would be complete in its administrative provisions with this provision eliminated. One answer is: To avoid the unsatisfactory conditions existing in virtually all the States under the operation of their general property-tax systems, the result of which has been that only 20 per cent of the value of all personalty, including but a nominal portion of intangible personalty, and less than one-half of the value of all realty has been given in by the taxpayer for assessment. The State and local tax burdens are thus harsh and inequitable and measurably limited to those either honest and willing enough to disclose their full property values for taxation or those whose property is not concealable. A taxpayer is

practically penalized for being honest. Most European countries require a personal return for the purpose of income-tax assessment. The fact should not be overlooked, however, that the successful administration of this method is necessarily so drastic, and in some respects so inquisitorial, as likely to render the tax

law unpopular in a country like ours. Human nature is such that it is more disposed in the beginning to antagonize a tangible than an intangible tax, however just the former and however unjust the latter. Foreign laws requiring a personal return would derive but a comparatively small amount of taxes unless the law should be enforced in a most rigid and drastic manner. When the English Government adopted the system of collection at the source the tax rates were reduced one-half, and yet the amount of revenue derived was the same as under the former higher rates. This method greatly reduced inquisitorialness. The inexpediency of depending upon a personal return of the taxpayer has been thoroughly demonstrated in the administration of our State property-tax systems. More than \$60,000^000,000 of our national wealth consists of personalty. By far the larger portion of this huge amount is intangible personalty, most of which has always been concealed from the tax gatherer. According to a late report of the Kentucky Tax Commission, the amount of deposits in the banks of the State on January 1, 1912, was given in, under oath, for assessment at \$12,-847,868, whereas the true amount of deposits, according to the report of the banks, was \$133,339,871. A Kentucky law imposing a tax on dogs yields a larger revenue to the State treasury than that derived from the entire bank deposits. The report of the New York State

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Board of Tax Commissioners in 1910 showed that the ratio which the assessment of personal property bore to the total assessment had fallen to 5.65 per cent in 1909. The assessed value of real estate in 13 States for the year 1910 was \$9,708,731,821, while its estimated true value was \$28,285,821,708. This but illustrates the ill-balanced and unsatisfactory tax conditions in most of the States. Their general property tax systems have almost broken down.

Moreover, there are 30,000 Americans residing in France alone — most of them wealthy — who draw their incomes from this country. Many nonresident Americans annually receive as much as \$500,000 income from interest on our corporate bonds alone. No tax method has heretofore been devised that would reach this class of persons or that would successfully reach the resident owners of our more than \$40,000,000,000 of intangible personalty. In the light of the facts I have enumerated, it was deemed both wise and necessary to insert in the new law a method by which the Government might intercept the tax on certain large classes of income before it reached the owner and taxpayer. England, Italy, and other countries have long employed this method with splendid results. A number of States now successfully operate it to a limited extent. The English method of retention at the source was adopted in a modified form under the new law. It is completely applied to income derived from corporate interest due to individuals and only partially applied to other fixed

annual income accruing to individuals. To require the tax to be withheld on all fixed annual income derived from rent, salaries, and other sources, as in England, regardless of amount, would necessitate the return of a large amount, either by refund or abatement of the assessment, in view of the high exemption of \$3,000. England annually refunds in any millions on account of exemptions, abatements, and reductions. The new law will secure the substantial benefits of collection at the

source and at the same time avoid any refund of taxes on account of exemptions, and also satisfy almost all claims for deductions at the source of the income by abating the assessment. Every individual taxpayer has a number of remedies for securing the benefit of both exemptions and deductions. There will be only a limited number of instances in which the tax will be withheld upon the entire taxable income of an individual; in most cases he will have other income of which he will be required to make a personal return, and in all such cases he would naturally claim and secure the benefit of his exemptions and deductions in connection with income embraced in his personal return." Representative Cordell Hull, of Tennessee, before the New York State Bar Association. N. Y. Bar Ass'n Report, 1914, pp. 132-135. "There remains, then, only the stoppage-at-source or schedule income tax. The advantages of this method have been fully stated in our account of the English conditions. It also affords the reason why the Italian income tax is more successful than the Austrian or the Swiss. Even in Italy, it will be remembered, only about four-tenths of the revenue is derived through the stoppage-at-source method; but since, in these schedules, almost the entire amount of taxable income is collected, while in the other schedules the tax is very much of a farce, it is no exaggeration

to say that in all probability not more than a quarter of the real income of the country is secured by the stoppage-at-source method. Even this small percentage, however, serves to make the Italian tax more successful than the Swiss or Austrian tax. On the other hand, according to the careful calculations that have been made by the French government, the accuracy of which in this respect has not been seriously disputed, at least three-fourths of the large revenues that are to be expected from the French income tax would be raised according to the stoppage-at-source idea.
. "In the United States the trga-

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to a slight degree in a former statute." l^o part of the present Act has been the subject of so much complaint.^*

menta in favor of the stoppage-at-source income tax are far stronger than in Europe, because of the peculiar conditions of American life. In the first place, nowhere is corporate activity so developed, and in no country of the world does the ordinary business of the community assume to so overwhelming an extent the corporate form. Not only is a large part of the intangible wealth of individuals composed of corporate securities, but a very appreciable part of business profits consists of corporate profits. In the second place, in no other important country are investments to so great an extent domestic in character. The one great difficulty in England, as we

have learned, is that connected with foreign securities. And in France, where the same difficulty exists, we have learned that the perfected control of these foreign investments through the French bankers and agents forms the one difficult and complicated point in the scheme. In the United States, on the other hand, the situation is the reverse. Instead, of our capitalists seeking investments abroad, it is the foreign capitalist who purchases American securities. We are, therefore, fortunately exempt from the chief embarrassment which confronts Europe; and there is every likelihood that this situation will not be changed for some time to come. The arguments that speak in favor of a stoppage-at-source income tax abroad hence apply with redoubled force here. The stoppage-at-source scheme lessens, to an enormous extent, the strain on the administration; it works, so far as it is applicable, almost automatically; and, where enforced, it secures to the last penny the income that is rightfully due. Can there really be any doubt as to the preference to be given to the stoppage-at-source income tax over either the lump-sum or the presumptive income tax under American Foster Income Tax. - 27.

ditions?" Seligman Income Tax, 660-662.

10 Act of July 14, 1864.

11 See § 25 supra. "In connection with this general problem of stoppage at source, two chief points deserve consideration: first, is the principle itself sound; and second, what administrative regulations have been issued to facilitate the execution of the law?

"Among the criticisms directed against the principle of stoppage at the source, the first to be noted is the contention that there is no warrant for imposing upon the so-called

'withholding agents' the expense connected with the withholding of the tax and the rendering of the accounts to the government. In this contention there seems to be some merit. It must be remembered, however, that in so far as the withholding agents are corporations, they all enjoy a privilege which is not granted to corporations in Europe, namely, that of deducting interest on debt from their gross income. Apart from this consideration, however, it would seem proper for the government to allow some compensation to withholding agents for the expense involved. This might be done by amending the law, or perhaps by a mere administrative provision. In any event, the matter seems not sufficiently important seriously to compromise the principle of the law.

"The next criticism is more weighty. It is well known that since the beginning of the income-tax agitation in the nineties, almost all of the American railroads, and many of the larger industrial corporations, have issued their bonds with the so-called 'tax-free' clause; that is, the corporations have obligated themselves to pay any taxes that might be imposed upon the bonds or coupons. The consequence is that as the present law compels these corporations to withhold the income tax on

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the coupons, the corporations under the tax-free clause have no option but to pay the tax themselves. As a result, the government is hitting the

wrong man. It seeks to impose the tax upon the bondholder; in effect, it mulcts the corporation. Under the. present situation, the tax due by such corporate bondholders is paid by the stockholders.

"The framers of the bill were well aware of this complication. They accordingly introduced a section rendering void any tax-free provision in corporate bonds to be issued in the future. They did not, however, deal with existing bonds, as they feared thereby to expose the law to a charge of unconstitutionality. It may be stated, indeed, that so far as bonds to be issued in the future are concerned, it makes little difference, from the economic and fiscal points of view, whether the tax-free provision is contained therein or not. The only result of a tax-free provision in future bonds would be that the bonds would sell at a higher price than would otherwise be the case, the tax being capitalized into a difference in the market price. So far as the corporation is concerned, it makes no essential difference because the corporation will sell its tax-free bonds at a price sufficiently high to compensate it for the payment of the annual tax; and so far as inequality of taxation among individuals is concerned, it also makes no difference, because the purchasers of tax-free bonds, instead of paying the income tax on the coupons, will capitalize this annual tax into the additional price they pay for the bonds. This consideration, however, does not affect the thousands of millions of existing corporate bonds where the result of the present system is to impose an additional burden on the corporation and to exempt the security holders.

"It was a consideration of this nature which led the representatives of the withholding corporations to suggest during the pendency of the discussion an alternative scheme. They conceded that the chief object to be attained by the payment-at-

source method ought to be kept in view, namely, the prevention of tax evasion. They contended, however, that the needs of government in this respect would be met by the receipt of information as to details of payment, ownership, addresses, etc., and they declared themselves quite ready to present such reports. This suggestion was not entirely novel. Such reports form a part of a system originally introduced by Italy when it imposed upon the corporations the duty of supplying the government with certain facts. For this scheme the present writer suggested the name of 'information at source,' a name that was at once adopted as a convenient appellation. The framers of the bill acknowledged its legitimacy and were willing to substitute in part at least, information at source for payment at source. The doubts of the majority of the Conference Committee, however, as to the efficacy of the proposed substitute in completely accomplishing the desired results were not entirely dispelled, and the principle of stoppage at source was therefore retained.

"The validity of these doubts must indeed be acknowledged, in part at least. To the extent that they are justifiable, it must be conceded that the Conference Committee was correct in refusing to permit any general acceptance of the information-at-source principle. Yet in so far as tax-free bonds are concerned, there is little doubt that the information-at-source method would have been an acceptable compromise between the impracticable lump-sum personal tax and the stoppage-at-source scheme, which virtually results, for the present at least, in some inequality. It must be remembered, however, that with the passage of every year and the gradual disappearance of tax-free bonds, the objections will diminish. Our conclusion must therefore be that, with this one exception, the stoppage-at-source principle is defensible, but that the in-

formation-at-Source method deserves serious consideration as a possibility of the future. At all events, the elimination of the old lump-sum per-

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The provision for the payment of tax at the source applies to lessees/[^] mortgagors of real or personal property,^{^*} trustees acting in any trust capacity, executors, administrators,^{^*} agents,^{^*}

sonal income tax constitutes an undeniable advance.

"The other phase of the stoppage-at-source question is that of the administrative regulations issued to enforce the law. The Treasury Department, which was given great latitude, has struggled with the difficult task of interpreting some obscure passages in the law and making them workable. In the first place, the Bureau of Internal Revenue has provided for the attachment of certificates by all withholding agents. In case of bonds and similar obligations, it has been settled that if the debtor corporation or its fiscal agent does not deduct the tax, the first bank, trust company, banking firm, individual or collecting agency receiving the coupons for collection or otherwise shall withhold the tax and attach a certificate stating for whom the tax is deducted, the person from whom the coupons were received, the bonds from which the coupons were cut, and the amount of interest. All such certificates, which may be signed by a bank or other responsible collecting agency, as well as those prepared by persons li-

censed to collect foreign incomes, must be filed with the district collector by the 20th of the following month. So far as income from sources other than corporate interest is concerned, the situation has been rendered much simpler by a regulation that the tax shall not be withheld until the aggregate of the payment during the year amounts to more than \$3000. The tax is then to be paid upon this aggregate unless the person to whom the income is payable files with the withholding agent a claim for the three or four thousand dollar exemption, respectively, in which case the tax is to be withheld only on the excess above the exemption claimed. The tax payer may present his claim for exemption to the revenue officers,

rather than to the withholding agent. In a great majority of the cases, of course, this will be done, because in order to take advantage of the deductions, the tax payer must file a statement of his annual income from all other sources. After the tax has once been withheld, any one may subsequently pass on the money involved without incurring any liability for further withholding or payment. It must also be remembered that the obligation on the part of the withholding agent to deduct the tax does not apply where the payment is made to corporations. Owing to this provision, as well as to the regulation governing the \$3000 exemption, most of the complications which had been anticipated so far as concerned rentals of real estate or the interest on real-estate mortgages, will be effectively removed. There are still left, however, not a few minor administrative difficulties to be overcome." Seligman in *Political Science Quarterly*, Mar. 1914, vol. XXIX, 18-22.

12 Tr. Reg. 64, *infra*, § 98.

13 Tr. Reg. 64, *infra*, § 103.

ii *Infra*, § 77.

15 Mr. Walter Lindner, of the New York bar, has expressed the opinion that the tax must be paid at the source by a rent collector who collects more than \$3,000 gross rent during the year from the tenants of different buildings or different apartments in the same building, although he has paid out of the same disbursements connected with the buildings, which reduce the net amount of income collected by him to \$3,000 or less. N. Y. Sun, Nov. 23, 1913. In view, however, of the probabilities of vacancies, a more reasonable construction of the statute would seem to be that the annual gains are not fixed or determinable, and that in any event the act only applies to the net income payable to the principal, not to the gross amount collected.

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receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, royalties, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits and income of another person, but not from such as are neither fixed nor determinable nor from dividends by corporations to stockholders, at least when not preferred or guaranteed. No such deduction or payment is required according to a ruling of the Treasury Department, from a corporation, association, or organization which is itself exempt from the tax.

According to the Treasury Regulations:

"Banks, bankers, trust companies, and other banking institutions receiving deposits of money, are not required to withhold at the source the normal income tax of 1 per cent on interest paid, or accrued, or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid or accrued and unpaid, must be included in the annual income return of the person entitled to receive such interest, whether on open account or on the certificate of deposit." When a note is given in payment of interest, rent or other income, accruing after March 1st, 1913, the maker of the note is considered by the Treasury Department to be the source where the income originates and is required by the Department to withhold the normal tax of one per cent, on the entire amount of the note, if the note is in excess of \$3,000, unless a claim is made for exemption in accordance with the

statute.*^ The same rule applies when the note is presented by one who has bought or discounted the same. In cases of such purchase or discount, the amount of the tax should be taken from the purchase price.** Illustrations of income the tax whereupon should be paid by the individual and not deducted

16 *Infra*, § 101. ^ See § 103, *infra*.

17 *Infra*, § 99. *» Tr. D. 1967.

18 Tr. Reg. 63, *infra*, § 100. ^4 Regulation 67.

19 Regulation 32. 26 Tr. Reg. 65.

20 *Ibid.* *° •^6»<i.

21 See § 103, *infra*.

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at the source are the incomes of farmers, merchants, agents compensated by commissions, lawyers, doctors, authors, inventors and other members of the professions, unless they are paid fixed salaries. The courts have not decided whether, in the case of alimony exceeding \$3,000, the husband is entitled or required to deduct the tax. In Great Britain, it has been held that the rule applies to a husband who, by a deed of separation, is bound to pay his wife a yearly allowance,*^ but not to interest paid a municipal corporation by a land-owner in respect of his share of the expense of paving.^'

It was held in Great Britain: that when a loan not secured by a mortgage is paid within less than a year, interest upon the same should not be thus deducted and paid by the debtor.'^ That where the interest is for an uncertain period, but is calculated by the year and accrues for more than a year, it may be deducted.^" That the tax cannot be deducted from a payment into court.* That when a payment is made to a creditor, who has proved his debt in an administration suit, the income tax may be deducted ; '^ and that a demand is not invalidated by its claim of interest in full without allowing for a deduction of the tax.*'

The Treasury Regulations provide :

"The normal tax of 1 per cent shall be deducted and withheld at the source^ and payment made to the collector of internal revenue as provided in the law, by the debtor, or his, her, or

^^ *Dalrymple v. Dalrymple*, 4 F. ulated at a certain rate per year, 545, 39 Scotch L. R. 348. although it accrued for a less time.

ii Corporation y. Lumsden (1913) ^^ *Holroyd v. Wyatt*, 1 De G. &

77 J. P. 124. S. 125 (1847); Dawson v. Dawson,
29 if osse V. SoZ*, 32 Beav. 269, 273, H Jur. 984 (1847); Bumlle v.
276, 32 L. J. Ch. N. S. 756. Humble, 12 Beav. 43 (1849); Belb
30 Goslings & Sharpe v. Blake, L. v. Bunny, 1 Kay & J. 216, 219
K. 23 Q. B. Div. .324, 58 L. J. Q. B. (1854).
N. S. 446, 37 Week. Eep. 774, 2 Tax 38 Dinning v. Henderson, 3 De G.
Caa. 450 (1889) ; De Peyer v. The & S. 702, 19 L. J. Ch. N. S. 273, 14
King, 100 L. T. N. S. 256 (1909); Jur. N. S. 1038 (1850); Criticized
Re Craven's Mortgage, Davies v. Cra- in Goslings & Sharpe v. Blake, L.
ven [1907], 2 Ch. 448, 76 L. J. Ch. R. 23 Q. B. Div. 324, 58 L. J. Q. B.
N. S. 651, 97 L. T. N. S. 475. Con- N. S. 446, 37 Week. Rep. 774; 2
tra. Lord Advocate v. Corporation of Tax Caa. 450 ([889).
Edinburgh, 6 F. 1, 41 Scot. L. R. 33 7?e Cooper [1911], 2 K. B. 550,
1, 4 Ta.-c Cas. 627 (1903) ; Bebb v. 80 L. J. K. B. N. S. 590, 105 L. T.
Bunny, 1 Kay & J. 216, 1 Jur. N. N. S. 273, 55 Sol. Jo. 554 (1911).
S. 203; where the interest was stip-

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its duly appointed agent authorized to make such deduction
and payment.

"No other person, firm, or organization, in whatever capacity
acting, having the receipt, custody, or disposal of any income,
as herein provided, shall be required to again deduct and with-
hold the normal tax of 1 per cent thereon, provided that any
such person, firm, or organization other than the debtor who
has withheld said tax, shall file with the collector of internal
revenue for his, her, or its district, a certificate (Form 1006) '*
showing from whom and in what amount the tax has been so
withheld." '*

"Copartnerships, companies, corporations, joint-stock com-
panies or associations, insurance companies, in whatever capac-
ity acting, including lessees, mortgagors of real or personal
property, trustees acting in any trust capacity, executors, ad-
ministrators, agents, receivers, conservators, employers and
all oSicers and employees of the United States, hereinafter
referred to as 'debtors' or withholding agents, having the con-
trol, receipt, custody, disposal, or payment of income as de-
scribed in article 63, shall deduct and withhold from such an-
nual gains, profit, and income, when the same shall have reached
an aggregate amount in excess of \$3,000, such sum as will be

sufficient to pay the normal tax of 1 per cent imposed by law, and shall pay the taxes so withheld to the collector of internal revenue for the district in which the said withholding agent resides or has his, her, or its principal place of business." '*

"A withholding agent who pays monthly, or periodically during the year, interest, rents, salaries, wages, etc., shall not withhold the said tax until such time as the interest, rents, salaries, wages, etc., shall have reached an aggregate amount in excess of \$3,000. When such amount has been reached, such agent shall withhold the tax on the whole \$3,000 and any excess thereof, unless the person to whom the income is due files a notice claiming exemption under paragraph C (as provided in art. 33 (a)), in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of

34 Form 1006 is printed supra, § 3[^] Tr. Reg. 34.
81. 88 Tr. Eeg. 64.

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\$3,000 or \$4,000 (as the case may be), and the tax so withheld shall be paid as required by law." ''

Withholding agents must file monthly and yearly returns in the forms previously set forth.^* By the statute "in all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source as aforesaid, such person shall , not receive the benefit of the deduction and exemption allowed in paragraph C of this section unless he shall not less than thirty days," namely, on or before January 29th, "prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption." ^' This, in the case of an individual acting in his own right, should be in Perm 1007 as revised, printed upon yellow paper, as follows:

[Yellow paper.']

FORM 1007 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE— INCOME TAX.

EXEMPTION CERTIFICATE

(For claiming exemption at the source as provided in paragraph C of the Federal Income Tax Law of October 3, 1913.)

To

(Give name of withholding agent.)

(Full post-office address.)

I hereby serve you with notice that I am single - married, with my (wife - husband) living with me, and that I now claim the benefit of the

exemption of \$, as allowed in paragraph C of the Federal

Income Tax Law of October 3, 1913 (my total exemption under said paragraph being \$) .

Date, , 191..

Signed :

Address :

(Full post-office address.)

Note. - Claim for exemption on Form 1007 can be filed with the debtor or withholding agent at any time, not less than 30 days prior to March first next succeeding the year for which exemption is claimed.)

(Signatures must be clearly and legibly written.)

37 Tr. Reg. 65, S9 Subsection E.

88 Supra, § 81.

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[Yellow Paper.]

FORM 1063.

EXEMPTION CERTIFICATE

FIRMS, ORGANIZATIONS, OR FIDUCIARIES.

(For use of firms, organizations, or fiduciaries entitled to receive income other than from interest on bonds, to establish their identity and non-liability to withholding at the source.

(Give name of debtor.)

(Character of income - other than interest on bonds - as rent, dividends from foreign corporations, &c.)

I do solemnly declare that the firm, organization, or person named below is entitled to receive the above described income, and that under the provisions of the income tax law and regulations said income is exempt from having the tax withheld at the source, and that all the information given herein is true and correct.

Date ,191..

(Name of firm, organization, or fiduciary.)

By

(Signature of person duly authorized to sign for firm, organization, and his official position or name of trust.)

Address

(Give full Post Office address of firm, organization or fiduciary.)

The exemption certificate provided for the use of individuals is Form 1,007, which will be used by individuals in all cases, except for interest on bonds, for which Forms 1,000 and 1,000B are provided.*"

The Act continues: "Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300 ; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and

40 T. D. 1998. No revenue stamp is required T. D. 2049.

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income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him : Provided further. That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has suflScient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete." "

The Regulations provide :

"When, however, claims for exemption and deductions as above described are not filed within the prescribed time, the tax collected in excess can be remitted only on presentation

of a claim for refund under the provisions of section 3220, Revised Statutes, said claims to be made either by the withholding agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.

"Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof, be filed under the provisions of said section 3220, Revised Statutes, either by the withholding agent against whom the assessment was made, or by the persons on account of whom such taxes were withheld." **

"In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of

111Ud. «2Tr. Keg. 33 (c).

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such exemption and thereupon no tax shall be withheld upon the amount of such exemption." ** The Treasury Department has promulgated the following rule: "In order that persons whose income tax is deducted and withheld and is to be paid at the source, may have an opportunity to file with the source which is required to withhold and pay tax for them, certificates claiming the benefit of deductions and exemptions provided for in paragraph B and allowed in paragraph C of the law, withholding agents will not pay to collectors of internal revenue the tax withheld by them under the law until after the time for filing claims for deductions and exemptions has expired." **

Subsection E, which contains the provisions concerning the deduction of the tax at the source, contains in one of its concluding paragraphs the following provision: "Nothing in this section shall be construed to release a taxable person from liability for income tax."

It has been argued that in case the Government should be unable to collect the tax from the person who deducts the same at the source, the individual from whose income the tax had been deducted at the source might be compelled to pay the same.** The writer has been informed at the office of the Collector of Internal Revenue for the Second District of New York that, in such a case, the loss will fall upon the United States and not upon the person to whom the income was due.

It has been said by Mr. Albert H. Walker: "This vicarious scheme is perhaps violative of the Fifth Amendment to the Constitution of the United States." "

§ 98. Deduction at the source by lessees. Lessees, who are bound to pay to individuals rent in excess of \$3,000 for any taxable year, under the same lease, are authorized and required to deduct, withhold and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the

43 Act of Oct. 3, 1913, II, E. cited by the Massachusetts Real Estate Exchange, 161 F. M. T. D. 1965, March 23, 1914. See State Exchange, Sen. Dec, Sixty-Tr. Reg. 33. third Cong., First Sess. (Briefs and

45 Complaint signed by Messrs. Davis & Cornwell, in Brush- Finance Committee, p. 1959).

Walker v. Union Pacific R. R. Co., U. S. 46 Walker's Pamphlet 21. See S. C. D. N. Y., March 1914; see 25, supra.

Memorandum submitted to the Sen-

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normal income tax imposed upon the same and are made personally liable for such tax. The lessee is entitled to receive a receipt from the collector of internal revenue for the amount of the tax so paid, and the receipt is sufficient evidence in the former's favor to justify him in withholding the amount therein expressed from his next payment to his creditor. The Treasury Department has ruled that the payment shall not be made until after the time for filing claims for deductions and exemptions has expired, namely, after January 29th.

Deduction at the source is not required of the lessees of corporations, nor authorized by them. Many large landowners have consequently incorporated their holdings in order to escape the inconvenience of such deductions. A vendee of mines or other real estate, who covenants to pay the same in annual instalment of a specified amount, irrespective of his receipts therefrom, has no right to make such a deduction, although such payments cover a period of thirty years.*

The owner of a coal mine sold the same to another for a term of fifty years, under a covenant: that the latter should pay the former a specified sum down and the same amount yearly thereafter, irrespective of the amount of coal therefrom mined; and that whenever he mined therefrom enough coal to exceed that year's payment, he would pay for each additional Lancashire acre of coal a specified sum until the whole consideration named in the deed had been paid. It was held, in Great Britain, that the annual instalment was not rent and that the vendor, and not the vendee, should pay the same.®

At least where the rent is payable in monthly, quarterly or other periodical instalments, it would seem equitable that the lessee should not be entitled to make any deduction, except from the last instalment, provided that such instalment is sufficient to meet the tax.

§ 98. Act of October 3, 1913, Week. Rep. 141, 5 Jur. N. S. 342 subsection D. (1858).

2 Ibid. Subsection J. 6 Taylor v. Evans, 1 Hurlst. & N.

8 T. D. 1965. See T. Reg. 33, and 101, 25 L. J. Exch. N. S. 269.

supra, § 97. 8 TincJcler v. Prentice, 4 Taunt.

i Foley V. Fletcher, 3 Hurlst. & 549; Baker v. Davis, 3 Campb. 474;

N. 769, 28 L. J. Excli. N. S. 100, 7 Phillips v. Beer, 4 Campb. 206.

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It has been held in Enghind : that the production of the receipt for the tax will be lyro tanto a defense in an action for rent/ although the suit is against an assignee and payment was made by his assignor ; ' that he need not prove the assessment upon the trial.' Whether the actual payment is essential to such a defense has not under the present law been decided.'" When the lessor files with the lessee the requisite notice in writing claiming the benefit of an exemption/' "no tax shall be withheld upon the amount of such exemption." '* It has been held in England that the tenant has the right to such deduction, although the landlord before the payment claimed exemption and the exemption has subsequently been allowed.'*

No contract entered into after the act took effect is valid in regard to any Federal income tax imposed upon a person liable to such payment." In Great Britain covenants in leases were enforced, which bound the lessee, sa^long as a tax upon income was imposed to pay further rent to an amount depending upon the amount of such tax, '^ and which bound the landlord to repay the tax to the tenant, if the latter would pay the former the full rental without any deduction for the tax the tenant had paid.

§ 99. Deduction at the source by employers. Employers who have agreed to pay to anyone a fixed or determinable salary or compensation exceeding \$3,000 for any taxable year are authorized and required to deduct, and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the normal income tax imposed upon the same and are made personally liable for such tax.' The deduction should not be made until the annual salary or compensation al-

7 Clennel v. Bead, 7 Taunt. 50. i* Act of October 3, 1913, subsec-

i Phillips V. Beer, 4 Campb. 266. tion E.

9 That it would not be seems to ^* Beadel v. Pitt (1865), 11 L. T. be suggested by Be Cooper [1911], N. S. 592, 593, 13 Week. Hep. 287. 2 K. B. 550, 80 L. J. K, B. N. S. 16 Lom6 v. Brewster (1879), L. 590, 105 L. T. N. S. 273, 55 Sol. Jo. E. 4 Q. B. Div. 609.

554. § 99. lAct of Oct. 3, 1913, II,

10 See supra, § 97. subsection E. It has been ruled that

11 Subsection E. this does not apply to salaries of

12 Stoatman v. Ambler, 8 Exch. actors contingent upon the run of 72 24 L. J. Exch. N. S. 185. a play or the length of the dramatic season. T. T>. Dec. 5, 1913.

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ready paid or due exceeds \$3,000.* The tax should not be paid before January twenty-ninth of the following year.' When such compensation is neither fixed nor determinable nor in excess of \$3,000 a year, or it is indefinite or irregular as to amount or time of accrual, there can be no such deduction and the normal tax, if any is due, must be paid by the employee.* The benefit of any exemption or deduction to which he may be entitled can be claimed by the employee in the manner previously explained.*

§ 100. Deduction at the source by officers and employees of the United States. Officers and employees of the United States having the control of the payment of a fixed and determinable salary or compensation in excess of \$3,000 a year to a Government employee or officer are authorized and required to deduct and pay to the proper internal revenue collector, so much thereof as will be sufficient to pay the normal income tax imposed upon the same and are made personally liable for siich tax.^ The deduction should not be made until the aggregate salary or compensation already paid or due exceeds \$3,000.* The tax should not be paid before January twenty-ninth of the following year.' When such compensation is neither fixed nor determinable nor in excess of \$3,000 a year, or it is indefinite or irregular as to amount or time of accrual, there can be no such deduction, and the normal tax, if any is due, must be paid by the employee.* ISTo such deduction is made from the salary of the present President of the United States during his present term, nor from the salaries of the judges of the supreme and inferior courts of the United States now in office.* This exemption does not apply to the judges or other officers of the Governments of the District of Columbia, Porto Rico and the Philippine Islands, or the political subdivisions thereof.* Whether it applies to the judges of the District Court of Alaska and the United States Court for China is a doubtful question.

ZTr. Reg. 65. 2 Tr. Reg. 65.

3 T. D. 1965. See Tr. Reg. 33. s T. D. 1965. See Tr. Reg. 33.

4 Statute II. Subsections B, E. * Statute II. Subsections B, E.

5 Supra, § 97. 5 l)id. Subsection B.

§ 100. lAct of October 3, 1913, « Ibid. Subsection M.
II, subsection E.

430 DEDUCTION^ AT THE SOURCE. [§ 100

These are not usually considered to be courts of the United States.^ The same doubt exists concerning the salaries of members of the Board of General Appraisers and the fees of United States commissioners. Where the officer or employee is married and lives with his wife, or is entitled to an additional deduction or exemption whenever the same exceeds the statutory amount, or for other reasons ; he may obtain the same by filing with the disbursing officer the proper notice claiming the benefit thereof within thirty days before the pay-day.'

§ 101. Deduction at the source by masters, receivers, trustees and referees in bankruptcy, executors and administrators. In the payments by a master, receiver, trustee or referee in bankruptcy, executor or administrator, to individual creditors of the estate, which is in his hands for administration, the normal income tax must be deducted from so much as is paid for interest, whenever the same exceeds the statutory amount.* The said deduction should be made by them from periodical payments until the aggregate due or previously paid exceeds \$3,000.* They should not pay the tax before January 29th of the succeeding year.' When the person entitled to such interest is entitled to an additional exemption or deduction, he may obtain the same by filing with such payer the proper notice on or before that date.*

The former practice of masters in chancery, in the administration of an insolvent's estate, in Great Britain, was to allow creditors to prove the amount fif the principal of the debts due them with interest, less the income tax upon debts carrying interest by law, calculated to the date of the judgment or order

"J American Insurance Co. v. Can- of Columbia is a court of the United ter, 1 Pet. 511, 7 L. ed. 243; Benner States within the meaning of U. S. V. Porter, 9 How. 235, 13 L. ed. Rev. Stat. § 714, U. S. Comp. Stat. 119; Clinton v. Engleirecht, 13 1901, p. 578. See Foster's Fed. Pr. Wall. 434, 20 L. ed. 659; McAllister 5th ed. § 2.

V. U. 8. 341 U. S. 174, 35 L. ed. 8 Act of Oct. 3, 1913, subsection E, 693, 11 Sup. Ct. Rep. 949; James v. Rev. Form. 1007, printed in full su-
V. S. 202 U. S. 401, 50 L. ed. 1079, pra, § 97.

26 Sup. Ct. Rep. 685; Bomeu v. § 101. 1 Act of October 3, 1913,
Todd, 206 U. S. 358, 368, 51 L. ed. subsection F.

1093, 1097, 27 Sup. Ct. Rep. 724 2 Tr. Reg. 65, supro, § 97.

(United States Court for Porto » T. D. 1,965, Tr. Reg. 33.

Rico). But it has been held that * Rev. Form 1,007 printed in full
the Supreme Court of the District supra, § 97.

§ 102] DEDUCTION BY GUAEDIANS. 431

for administration. The interest less the tax and any costs allowed were added to the principal and dividends calculated on the whole amount. The income tax so deducted was not accounted for to the revenue, because until the principal sums were paid it was considered that no income tax was in fact payable. It was held : that a creditor was authorized to prove for the balance of principal outstanding, with interest to the date of the judgment, without any deduction vrith respect to income tax; that from each payment on account of interest the tax should be deducted and paid to the Commissioner of Internal Eevenue.* Where a trust deed provided for the payment of arrears of interest upon debentures before the principal, certain payments were made pending a foreclosure suit, and after a sale of the mortgaged property a final distribution decreed ; it was held that the debenture-holders had no right to them so as to treat the payments made prior to the sale as capital, but that the entire amount which they received should first be applied to the satisfaction of their claim for interest and the tax deducted from the same.®

§ 102. Deduction at the source by guardians, trustees, executors, administrators, agents and all persons acting in fiduciary capacity. Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, before paying any income to their respective individual beneficiaries, must deduct and pay to the collector the normal income tax at its source, unless the amount collected for the respective benefit of the last is not fixed and determinable or does not exceed \$3,000 for any taxable year.^

As to these the Treasury Regulations provide : "Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any

S Be Green, Ball & Ellis (1904), But see Smith x. Law Guarantee ami
W. N. 78, 105. Trust Society [1904], 2 Ch. 569, 73
8 Re Queensland Land & Goal Co., L. J. Ch. N. S. 733, 91 L. T. N. S.
Limited {Davis v. Martin) (1903), 545, which tends to support a oon-
unreported; Bowling on Income Tax, trary conclusion.
7th ed., p. 463; explained in Anno- § 102. 1 Act of Oct. 3, 1913, II, E.
tated Statute and Digest, infra.

432 DEDUCTION AT THE SOUBCE. [§ 102

fiduciary capacity hereinafter referred to as fiduciary agents,
who hold in trust an estate of another person or persons, shall
be designated the 'source' for the purpose of collecting the
income tax, and by filing notice with other debtors or with-
holding agents said fiduciary shall be exempt from having any
income, due to them as such, withheld for any income tax by
any other debtor or withholding agent. Other debtors or with-
holding agents upon receipt of such notice shall not withhold
any part of such income from said fiduciary and will not in
such case be held liable for normal tax of 1 per cent due there-
on. The form of notice to be filed with the debtor or withhold-
ing agent by fiduciary will be on Form 1015. Where such
exemption is not claimed, notice thereof on Form 1019 should
be filed with the withholding agent." *

[Yellow paper.1

FORM 1015 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Fiduciary, the Source.

(To be filed with debtor or witliholding agents by fiduciaries claiming
exemption from withholding at the source.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
191-

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I (we) do solemnly declare that the estate or trust named below is the
owner of the above-described bonds from which were detached the accom-
panying coupons, or upon which there is due the above-described registered
interest, and acting for the estate or trust in the capacity herein stated,
I (we) hereby declare that I (we) do now claim exemption from having

the normal tax of 1 per cent withheld from said income by the debtor at the source. I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the law, of withholding and paying the income tax due, for which I (we) may be liable.

>

(Name of fiduciary.) (Capacity in which acting.)

for

(Name of estate or trust.)

Date, , 191-

(Full post-office address.)

Note. - When numbers of bonds are required to be given, same are to be entered on the back hereof.

(Signatures must be clearly and legibly written.)

2Tr. Reg. 70.

§ 102] DEDUCTION BY GUARDIANS. 433

FORM 1019 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Fiduciary, not Source.

(To be filed with debtor or withholding agents by Fiduciaries when not claiming any exemption, as an alternative to the filing of Form No. 1015 in which exemption is claimed.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I (we) do solemnly declare that the estate or trust named below is the owner of the above-described bonds from which were detached the accompanying coupons, or upon which there is due the above-described registered interest, and acting for the estate or trust in the capacity herein stated, I (we) hereby, declare that I (we) do not now claim exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source.

I

(Name of fiduciary.) (Capacity in which acting.)

for

(Name of estate or trust.)

Date, , 191-

(Full post-office address.)

Note. - When numbers of bonds are required to be given, same are to be entered on the back hereof.

Signatures must be clearly and legibly written.

"Only one certificate is required for all coupons from the same issue of bonds, the property of different estates or trusts where fiduciaries have the custody and control of more than one estate or trust, and said estates or trusts- have as assets, bonds of corporations, etc., of the same issue, said fiduciaries may adapt certificates Form 1015 or Form 1019 by changing the words 'estate or trust' in lines 1, 2 and 3 of said forms to the plural, and inserting in the blank space provided in line 3 of said forms for the description of the estate or trust, the words: 'As noted on the back hereof.' In such cases the notation on the back of the certificate should show for each estate or trust: (a) The name of the estate or trust, (b) The amount of the bonds, (c) The amount of the interest. In all other respects the certificates should be filled out as indicated thereon." ' Foreign fiduciaries, when any or all

3 T. D. 1961, 1987.

Foster Income Tax. - 28.

434 DEDUCTION AT THE SOURCE, [§ 102

of the beneficiaries are citizens of the United States or resident aliens, should use Form 1015, whenever an exemption is claimed ; but when all of the beneficiaries are nonresident aliens, foreign fiduciaries may use Form 1004.* When the fiduciary uses Form 1019, the debtor organization is the source for the deduction and withholding of the normal tax, and fiduciaries receiving the income therein described from which the normal tax has been withheld are not required again to deduct and withhold the normal tax upon the same."

"When the normal tax on undivided annual net income has been so withheld, such tax shall not be again withheld when such portion of the income is actually distributed and paid to said beneficiary." * Trustees to secure the payment of bonds issued by corporations or of other indebtedness of corporations are subject to the same regulations as are corporations themselves and must, unless an exemption or deduction is duly claimed or the creditor is a corporation, joint-stock company,

association, or an insurance company, deduct the normal tax from all payments of interest, although such payments aggregate less than \$3,000.'

The disbursers, collectors, vendors, and dealers purchasing otherwise than from a banker or other dealer therein, coupons, checks or bills of exchange, for or in payment of dividends upon the stock or interest upon the obligations of foreign corporations, associations and insurance companies engaged in business in foreign countries, must deduct, withhold and pay the normal income tax therefrom, although the same is less than \$3,000, unless the owner is a corporation, joint-stock company or association, or an insurance company.'

§ 103. Deduction at the source by corporations who are mortgagors or obligors. Trustees under trust deeds, made by corporations, joint-stock companies or associations, and insurance companies, and corporations, joint-stock companies and associations and insurance companies when mortgagors, must

4 Deputy Comm'r. Speer to Leiden- » T. D. 1911. Dec. 8, 1913.

burg Thalmann & Co., May 13, 1914. « Tr. Reg. 75.

Form 1004 is printed in full, infra, 7 a^^+utg II, E, infra, § 103.

§ 103. »Tbid.

§ 103] DEDUCTION BY COEPOEATIONS. 435

deduct and pay to the collector the amount of the normal income tax from the income due to individuals which is derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, although such interest does not amount to \$3,000.* Whether this applies to preferred stockholders or not may be an arguable question. According to an eminent authority, Mr. Victor Morav?etz, in the bill as pending in May, 1913, preferred stockholders were exempt.* It is not clear whether guarantors of interest secured by the mortgages of corporations must make such deduction and payment. It has been ruled that the tax should not be withheld at the source from interest paid or credited upon certificates of deposit or interest upon accounts of depositors with banks and trust companies.'

Deduction and payment at the source may be made by the debtors themselves or by their fiscal agent, or else by the first bank or collecting agency that receives the coupon for collection. "When the bondholder does not wish to disclose to the debtor his ownership of the bonds from which the coupons are cut, he should make provision for payment by the latter. The income may be derived from the United States or from a foreign country.* The debtors may be domestic or foreign corporations.* The creditors may be individuals, copartnerships, or corporations, joint-stock companies or associations. In the case of debtors who are corporations, joint-stock companies or

associations, they may be such as are liable to the tax or such as are exempt from the same. Different rules are prescribed for these different cases. The practice when the debtors are individuals has been previously described.® An individual mortgagor must make such deduction where the interest exceeds \$3,000, a year, but not otherwise.'

Such deduction is not made from the interest upon the obligations of a State or any political subdivision thereof, or upon the obligations of the United States or its possessions ; ' nor from the income derived from the operation of a public utility

§ 103. 1Act of October 3, 1913, i Ihid.
II, Subsection D. ^ Supra § 97.

8 N. Y. Sun, May 8, 1913. ' Supra § 97.

8 Tr. Reg. 67. « Tr. Reg. 37.

* Infra § 104.

436 DEDUCTIOJT AT THE SOURCE. [§ 103^

under a contract entered into before the passage of the Act, in so far as such payment will impose a loss or burden upon a State, Territory or the District of Columbia, or a political subdivision of a State or Territory; ' nor, according to a ruling of the Treasury Department, from interest upon the obligations of corporations, associations or organizations, the income of which is exempt from the tax.^" According to the construction placed upon the statute by the Attorney General and the Treasury Department, interest and coupons due to, or owned by, a nonresident alien are also exempt.^^

Such deduction is not made from any interest or coupon due to or owned by a corporation, joint-stock company or association, or insurance company ; ^^ nor, according to the ruling of the Treasury Department, from any interest or coupon due to, or owned by, a copartnership.*'

The payer is entitled to require a receipt from the collector and it is the safer practice for him to take the same.**

A covenant in a mortgage binding the mortgagor to pay the tax will be enforced when made prior to the passage of the statute, namely, October 3, 1913." Under a former statute it was held, that the mortgagor was entitled to deduct the tax from the payment of coupons, although the defeasance clause of the mortgage was as follows: "Provided, always, that if the said railway company or their successors do well and truly pay to the said Haight, the said \$100,000 on the days and times hereinbefore mentioned, together with the interest payable thereon, without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever, then," &c." ISTo contract entered into

9 Act of Oct. 3, 1913, II, B. McReynolds Oct. 23, 1913. Tr. Eeg.
10 T. D. 1967. In such cases at 46. See § 37 supra.
least, the Treasury Department re- 18 Act of Oct. 3, 1913, II, E.
quires that upon payment of interest 13 T. D. 1957. See Opinion of At-
they exact certificates of ownership torney General McReyonlds Feb'y 12,
and forward the same to the collect- 1914. Gf. Supra § 75.
or of the district where the organi- HAct of Oct. 3, 1913, II, J. 8u-
zation is located. Commissioner Os- pra § 96.
born to Lee Higginson & Co. May 4, 16/6id. 6 (c). Supra, % 97.
1914. 18 Haight v. Railroad Company, 6
11 Opinion of Attorney General Wall. 15, 16; published in full Part
VII.

§ 103] DEDUCTION BY COBPOKATIONS. 43 i

after the act takes effect is valid in regard to any Federal in-
come tax imposed upon a person liable to such payment.
Whether a mortgagor, which made such a covenant before the
enactment, can compel a mortgagee to relieve it by claiming
his statutory exemption of \$3,000, is a question that has not
been raised nor decided ; since the principal corporations in this
country after deliberation and conference became satisfied that
to dispute the point with their bondholders might injuriously
affect their credit.

The regulations of the Treasury Department provide as fol-
lows: Income derived from interest upon bonds and mort-
gages or deeds of trust or other similar obligations of corpora-
tions, etc. "Tinder the law a tax of 1 per cent, designated as the
normal tax, shall be deducted at 'the source,' beginning Novem-
ber 1, 1913, from all income accruing and payable to any
person subject to such tax which may be derived from interest
upon bonds and mortgages, or deeds of trust, or other similar
obligations, including equipment trust agreements and receivers'
certificates of corporations, joint-stock companies or associations,
and insurance companies, although such interest does not
amount to \$3,000. Income derived from the interest upon the
obligations of a State, county, city, or any other political sub-
division, or upon the obligations of the United States or its
possessions, is not subject to the income tax, and certificates of
ownership in connection with coupons or orders for registered
interest will not be required.'*

"The term 'debtor,' as hereinafter used, shall apply to all corporations, joint-stock companies or associations, and insurance companies; and such 'debtor' may appoint withholding and paying agents to act for it in matters pertaining to the collection of this tax, upon filing with the collector of internal revenue for the district a proper notice of the appointment of such agent or agents. Where such withholding agent is so authorized by the debtor corporation, he may file with the collector, of his district the required returns and accompanying-certificates (arts. 50 and 51), in which case the assessment of

17 Act of October 3, 1913, II. Sub- w Tr. Reg. 37.
section E.

438 DEDUCTIOjy AT THE SOUECE. [§ 103

the tax withheld by him will be made in that district. Unless such authority is given, such reports, etc., will be furnished by the debtor corporation to the collector of its district (i. e., the district in which its principal financial or business office is located), where, in such case, assessment will be made." *'

"For the purpose of collecting the tax on all coupons and registered interest originating or payable in the United States, the source shall be the debtor (or its withholding and paying agent in the United States), who shall deduct the tax when the same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon, where such coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured. These certificates shall be made on the prescribed forms and shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations of each debtor. (See Arts. 43 and 46.)"'°

When the taxpayer does not wish to disclose to the debtor that he is the owner of bonds or coupons, he should file such certificate of ownership with his bank or collecting agency, which undertakes the collection, and instruct such bank or collecting agency to substitute therefor its own certificate in transmission to the debtor. In that case, the original certificates of ownership are sent to the Commissioner of Internal Revenue directly by the bank or collecting agency.'"*

19 Tr. Reg. 38. «»» Tr. Keg. 40.

20 Tr. Reg. 39.

[White Paper.]

FORM 1000 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE— INCOME TAX.

Ownership Certificate - Individual - Exemption not Claimed.

(To be furnished with coupons or interest orders showing ownership of
Ijonds.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)

, 191-

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I do solemnly declare that I am a citizen or resident of the United

\$ 103]

DEDUCTION BY COEPOEATIONS.

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States and am the owner of the above-described bonds from which were
detached the accompanying coupons, or from which I am entitled to the
above-described registered interest, and that all of the information as
given in this certificate is true and correct. I do not now claim exemption
from having the normal tax of 1 per cent, withheld from said income by
the debtor at the source.

Date, , 191-

(Usual business signature of owner of bonds)

(Full post-office address of owner.)

• By Agent.

(Usual business signature of agent
authorized to sign for owner.)

(Full post-office address of agent.)

* Note 1. - To be filled in only when duly authorized agent executes this certificate for owner, in which case the name and address of owner must be given, and collecting agent first receiving certificate must stamp across face "Satisfied as to identity and responsibility of agent" (giving name and address of collecting agent).

Note 2.-r-If securities are owned jointly by several persons one may sign, and the names, addresses, and proportion of ownership of each, indorsed on the back hereof.

Note 3. - When numbers of bonds are required to be given, same are to be entered on back hereof.

(Signatures must be clearly and legibly written.)

1Endorsement.1

JOINT OWNERS.

If securities described on other side are owned jointly, the names and addresses of owners and the proportion of ownership of each should be given.

Names

Full Post-Office Addresses

Proportion Owned

ITellov} Paper.}

FORM 1000B REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Individual - Exemption Claimed.

(To be furnished with coupons or interest orders showing ownership of

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DEDUCTION AT THE SOURCE.

[\$ 103

bonds and amount of exemption claimed under paragraph C of the Federal
Income Tax Law.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)

, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

Total exemption allowed under paragraph C, \$

Amount of exemption now claimed, .\$

I do solemnly declare that I am a citizen or resident of the United States and am the owner of the above-described bonds from which were detached the accompanying coupons, or from which I am entitled to the above-described registered interest, and that all of the information as given in this certificate is true and correct.
Date, 191-.

(Usual business signature of owner of bonds.)

'By

(Full post-office address of owner.)

(Usual business signature of agent
authorized to sign for owner.)

(Full post-office address of agent.)

'Note 1. - To be filled in only when duly authorized agent executes this certificate for owner, in which case the name and address of owner must be given, and collecting agent first receiving certificate must stamp across face "Satisfied as to identity and responsibility of agent" (giving name and address of collecting agent).

Note 2. - If securities are owned jointly by several persons one may sign, and the names, addresses, and proportion of ownership of each, indorsed on the back hereof.

Note 3. - When numbers of bonds are required to be given, same are to be entered on back hereof.

(Signatures must be clearly and legibly written.)

[Endorsement.]

JOINT OWNERS.

If securities described on other side are owned jointly, the names and addresses of owners and the proportion of ownership of each should be given.

Names

I Full Post-Office Addresses | Proportion Owned

§ 103] DEDUCTION BY COEPOKATIONS. 441

When securities are owned jointly by several persons, the certificates of ownership on these forms may be signed by either of them and the names, addresses and proportionate ownership of each must be shown on the back thereof.* When form 1000B is filed in such a case, the signer may claim exemption thereon only in his own right. Such of the other joiners as desire to claim exemption against their pro rata share of the income should file with the signers of the certificates on form 1007,* and the latter should be attached to the joint certificate when presented with coupons or interest orders.* Partnerships must file certificates evidencing the fact of ownership in form 1001 when presenting for collection or payment coupon or interest orders, and the Treasury Department has ruled that thereupon the tax upon the interest payments to them shall not be withheld.* Form 1003 will be accepted.* Certificates of ownership claiming an exemption must also be attached to coupons from the bonds of corporations which are exempt from taxation.^ When not accompanied by a certificate of ownership, the bank or collection agency must deduct the tax and attach to the coupon its own certificate, form 1002."

When the coupon or order is not accompanied by such a certificate of ownership, the first bank, trust company, banking firm or individual, or collecting agency receiving the coupon for collection or otherwise, must deduct and withhold the tax and must attach to the coupon or order his or their own certificate giving the name and address of the owner, or, if the owner is unknown, of the person presenting the same, together with a description of the coupon, setting forth the fact that he or they, as the case may be, are withholding the tax upon the same. Such certificate must be in substantially the following form:

21 T. D. 1976. 2« Comm'r Osborn to Corporation

22 As amended T. D. 1974. Trust Co. July 30, 1914. Records

23 Deputy Commissioner Fletcher Corp. Tr. Co., 297.

to Central Trust Co. May 14, 1914. ^T Ibid. Form 1002 is printed in

24 T. D. 1957. But see supra § 75. this section supra.

25 Acting Comm'r Fletcher to Corporation Tr. Co. March 27, 1914. Records Corp. Tr. Co., 232.

442 DEDUCTION AT THE SOURCE. [§ 103

[Green Paper.']

FORM 1002 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Certificate of Bank or Collecting Agency.

To be presented with coupons or interest orders when not accompanied by certificate of owners.

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I (we) do solemnly declare that the bank or collecting agency named below has purchased or accepted for collection the accompanying coupons

or interest orders from of

(Name of party from whom received.)

, and that no certificate of ownership

(Full post-office address of said party.)

accompanied said coupons or interest orders, and that I (we) have no knowledge as to who is the owner or owners of the bonds (except as noted on back hereof) * upon which the above-described interest is due, and the bank or collecting agency hereby acknowledges responsibility of withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Date, , 191-.

(Bank or collecting agency.)

By

(Signature of officer authorized to sign and official position.)

(Full address of bank or withholding agency.)

* Note. - If the ownership of bonds is known to person signing this certificate, he must give the name and address of the owner on the back hereof.

(Signatures must be clearly and legibly written.)

"Responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached, may present the coupons with the attached cer-

tificates to the debtor or withholding agent for collection, or such certificates may be detached and forwarded direct to the Commissioner of Internal Revenue, provided such bank, banker, or collecting agent shall substitute for such certificates its own certificate, and shall keep a complete record of each transaction, showing -

"1. Serial number of item received.

"2. Date received.

"3. Name and address of person from whom received.

*'4. Name of debtor corporation.

§ 103] DEDUCTION BY COBPOEATIONS. 443

"5. Class of bonds from which coupons were cut.

"6. Face amount of coupons.

"Exemptions from tax claimed by owner under paragraph 0.

"For the purpose of identification, such substitute certificates should be numbered consecutively, and corresponding numbers given the original certificates of ownership.

"The permission here granted will extend to responsible banks, bankers, and collecting agents in foreign countries, through whom collection of such interest coupons is made.

"The various substitute certificates hereby authorized will correspond with the form numbers of the ownership certificates detached by the collecting agent, except that the substitute certificates' form numbers will be followed by the letter 'a.' " **

[Yellow Paper.]

FORM 1058.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Substitute Ceitifiate - Exemption Claimed.

(To be attached to interest coupons when the collecting agent's certificate is substituted for the certificate of owner in which exemption was claimed.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191- .

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

Total exemption allowed under paragraph C, \$

Amount of exemption claimed, \$

I (we) do solemnly declare that the owner of the above-described bonds from which were detached the accompanying interest coupons has filed

with me (us) a certificate of ownership. Form No , duly

executed and filled in according to Treasury Regulations, which certificate has been indorsed by me (us) as required by Treasury Regulations, and that under the provisions of the income tax law and regulations, said interest is exempt from the withholding and payment of the income tax at the source, or that exemption was claimed as stated herein ; and I (we) do hereby promise and pledge myself (ourselves) to forward the said certificate to the Commissioner of Internal Revenue at Washington, D. C, not later than the 20th day of next month, in accordance with Treasury

Regulations.

Date, , 191-

By

No

28 Tr. Reg. 40.

(Name of bank or collecting agency.)

(Signature of person authorized to sign,
and his official position.)

(Full post-office address of collecting agency.)

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[White Paper.]

FORM 1059.

TEEASUEY DEPAETMENT, INTEENAL REVENUE- INCOME TAX.

Substitute Certificate - Exemption Not Claimed.

(To be attached to interest coupons when collecting agent's certificate is substituted for certificate of owner in which exemption was not claimed.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I (we) do solemnly declare that the owner of the above-described bonds from which were detached the accompanying coupons has filed with me (us)

a certificate of ownership. Form No , duly executed and filled

in according to Treasury Eegulations, which certificate has been indorsed by me (us) as required by Treasury Regulations, and which certificate did not claim any exemption from having the normal tax of 1 per cent withheld by the debtor at the source; and I (we) do hereby promise and pledge myself (ourselves) to forward the said certificate to the Commissioner of Internal Revenue at Washington, D. C, not later than the 20th day of next month, in accordance with Treasury Regulations.

Date, , 191-.

(Name of bank or collecting agency.)

By

(Signature of person authorized to sign,
and his offiicial position.)

(Full post-office address of collecting agency.)

No

The name of the bank or collecting agent may be printed or stamped and a fac-simile of the signature of the person authorized to sign the substitute certificate for the bank or collecting agent may also be printed or stamped on the certificate, provided that in all cases the bank shall first file with the Commissioner of Internal Revenue a certificate of its authorization in substantially the following form:

(City (Date)

The Commissioner of Internal Revenue,
Washington, D. C.

The undersigned hereby authorizes the use of the fac-simile signature

shown below upon all substitute income tax certificates issued in its name until this authorization is revoked by written notice to you.

(Name of bank or collecting agent.)

By

(Signature of person authorized to sign.)

(Fac-simile signature of (Official position.) 29

person authorized to sign.)

29 T. D. 1986.

§ 103] DEDUCTION BY CORPOEATIOKS. 445

"A debtor -whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds unless there shall be filed with said debtor or its fiscal agent [at least five days before the due date of said interest] through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed - By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2, of the income tax law, or by corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G, subdivision (a), of the act, or by a bona fide resident and citizen of a foreign country, claiming exemption as such." '°

"If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the name and address of the owners, and if registered in names other than the owners such names with addresses shall also be given. Such certificates shall also show whether the claimants do or do not then claim exemption from taxation at the source, under paragraph C, articles 9 and 10 (\$3,000, and under certain conditions \$4,000), as to the income represented by such coupons or interest. The certificates will be prepared on Form 1000 and must show the amount, if any, of exemption claimed, the total amount of ex-

emption to which the claimant is entitled and must be signed by the claimants, who shall use their ordinary business signatures. The certificates shall also show the postoffice and street

SOTr. Reg. 41,

446 DEDUCTION AT THE SOURCE. [§ 103

address of the claimants, the internal-revenue district, and the date when signed." *^

"Duly authorized agents may sign such certificates for the persons for whom they act, and withholding agents, banks, or others, with whom such certificates are filed, if satisfied as to the identity and responsibility of the persons so signing, shall stamp or write on the face of each such certificate 'Satisfied as to identity and responsibility of agent,' giving name and address of person thus certifying. Certificates so verified may be accepted by all other persons, firms, or organizations to whom presented, without question as to authority of such agent. If the person, firm, or organization first receiving such certificate is not satisfied as to the agent's identity and responsibility, then, in that event, the agent shall furnish evidence of his authority to so act, which will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall be indorsed as above provided." '^

When signed by such a bank or such a collecting agency, no indorsement, "Satisfied as to identity and responsibility of agent," is required.'

"Whenever interest coupons, accompanied by an individual who is a citizen or resident of the United States, are presented to a debtor or its withholding agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its withholding agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership (Form 1000). Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, and it shall be filed with the debtor at least five days before the due date of such interest." '*

"Where such certificates are so filed, the said debtors shall stamp or write on the interest orders or checks, as the case may be, 'Exemption claimed by certificate filed with debtor.' Where prescribed certificates are not so filed, said debtor shall

81 Tr. Reg. 42. Speer to National Park Bank, April

82 Tr. Reg. 43. 16, 1914.

88 Letter of Deputy Commissioner 84 Tr. Reg. 44,

deduct and withhold the normal tax of one per cent from the amount of such payment, and shall stamp or write on the interest order or check, as the case may be, 'Income tax withheld by debtor.' Responsible: banks, bankers, or collecting agents receiving for collection interest orders or checks bearing the aforesaid endorsements, may present said interest orders or checks for collection without requiring that certificates of ownership be filed therewith. Certificates of ownership are not required to accompany interest orders or checks in payment of interest on fully registered bonds, as information as to ownership of bonds will be furnished by debtor organizations on monthly list returns, Form 1012 [p. 83] ; but claim for exemption must be filed with debtors, or the tax must be withheld; and the form of certificate provided for use of owners of coupon bonds, may be used by owners of registered bonds for the purpose of claiming this exemption. Where because of failure to file certificates claiming exemption, in compliance with above regulations, a part of the income from interest on registered bonds has been withheld for the payment of the normal income tax, debtors may, upon the filing of the proper certificates as provided in Article 42 [p. 163], Income Tax "Regulations, to the extent of exemption claimed, release and pay to the persons entitled thereto the amount of such income so withheld."^*

"If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision (a) of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

"Such certificate will be made on Form 1001, and must be signed in the name- of the organization (stating its place of

38 T. D. 1»74.

448 DEDUCTION AT THE SOURCE. [§ 103

business) by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, and must be properly dated." "

[Yellow Paper.]

FORM 1001 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Firms or Organizations.

(Showing ownership of bonds, which is to be furnished by firms or organizations not subject to withholding of tax on interest at source.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I do solemnly declare that the firm or organization named below, and of which I am a member or an officer, is the owner of the above-described bonds from which were detached the accompanying coupons, or upon which there is due the above-described registered interest, and that under the provisions of the Income Tax Law and Regulations said interest is exempt from having the tax withheld at the source, and that all the information given herein is true and correct.

Date, , 191

(Name of firm or organization.)

By

(Signature of person duly authorized to sign, and his official position.)

Address :

(Give full post-office address of firm or corporation.)

Note. - When numbers of bonds are required to be given, same are to be entered on back hereof.

"Coupons, or orders for registered interest, payable in the United States, representing the interest on bonds owned by nonresident aliens, must be accompanied by the prescribed certificate (Form 1004), but this certificate may be signed either by the owner or, in behalf of the owner, by a reputable bank or bankers or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide nonresident and alien owners, and when such certificate is thus attached the normal tax of 1 per cent on such

36 Tr. Reg. 45. for foreign partnerships. Tr. Reg.

87 Formerly a separate form of 46.
certificate, No. 1016 was prepared

§ 103] DEDUCTION^ BY COEPOEATIONS. 4:49

coupons or interest orders need not be withheld at the source by the debtor or collecting agency. Unless such proof of foreign ownership is furnished, the normal tax of 1 per cent should be deducted." "

[Yellow Paper.]

FORM 1004 REVISED.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Nonresident Aliens.

(To be furnished with coupons detached from bonds or other obligations owned by citizens or subjects, firms, corporations, or organizations of foreign countries and who are not residents of the United States.

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)
, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I do solemnly declare that the owner of the bonds from which were detached the accompanying coupons, or upon which there matured the aforesaid registered interest, is a nonresident alien in respect to the United States, and is exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States wherever residing, or foreigner residing in the United States or in any of its possessions, has any interest in said bonds; and that all of the information as given in this certificate is true and correct.

Date, , 191-.

(Signature of owner or, if organization, name.)

(If organization, signature of official authorized to sign, and official position.)

(Full post-office address of owner.)

Note. - When numbers of bonds are required to be given, same are to be entered on back hereof.

(Signatures must be clearly and legibly written.)

Foreign organizations engaged in business within the United States are subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business trans-

acted and capital invested within the United States; but said organizations shall be exempt from having any part of their income withheld by a debtor or withholding agent, and claim for such exemption will be made on Revised Form 1001."*

88 Tr. Reg. 46. S8a Hid.

Foster Income Tax. - 29.

450 DEDUCTIOBT AT THE SOURCE. [S 103

"For the purpose of complying with income-tax regulations requiring the filing of certificates of ownership of bonds when presenting coupons or interest orders for collection of interest on bonds of domestic corporations of the United States owned by nonresident aliens as to the United States, a certificate in the form following is provided, which may be executed by responsible banks or bankers in the United States and foreign countries for and in behalf of nonresident alien owners of bonds of United States corporations:

[Yellow Paper.1

FORM 1060.

TREASURY DEPARTMENT, INTERNAL REVENUE- INCOME TAX.

Ownership Certificate - Nonresident Alien - To Be Executed by Banks, Bankers, Etc.

(For use by foreign banks or bankers, to accompany coupons detached from bonds or other obligations owned by citizens or subjects, firms, corporations, or organizations of foreign countries and who are not residents of the United States.)

(Give name of debtor.)

(Full description of bonds, giving name of issue and interest rate.)

, 191-.

(Date of maturity of interest.)

Amount of coupon or registered interest, \$

I (we) do solemnly declare that the owners of the bonds from which were detached the accompanying coupons or upon which there matured the aforesaid registered interest are nonresident aliens as to the United States, and are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States, wherever residing, or foreigner residing in the United

States or in any of its possessions, has any interest in said bonds; and that all of the information as given in this certificate is true and correct. I (we) hereby agree that if at any time within three years from the date of this certificate it shall appear that the income or any part thereof represented or covered by this certificate was, or is, subject to the normal tax imposed by the United States, upon presentation of proof of that fact to me (us) by, from, or through the Commissioner of Internal Revenue, Washington, D. C., I (we) will pay and remit to the United States Government the amount of tax claimed to be due; and I (we) hereby further agree that whenever in the judgment of the Commissioner of Internal Revenue it shall be necessary in or to the administration of the income tax law, I (we) will, upon request of the said Commissioner of Internal

§ 103] DEDUCTION BY COOPERATIONS. 451

Revenue, disclose and furnish to him the names and addresses of the owners and the amounts of the bonds aforesaid.
Date, , 191-

(Name of bank or banker.)

By

(Signature of official authorized to sign.)

(Official position.)

(Full post-office address of bank or banker.)

Note. - When numbers of bonds are required to be given, same are to be entered on back hereof.

(Signatures must be clearly and legibly written.)

"When banks or bankers use the foregoing certificate they may include in one certificate all the coupons from bonds of the same class and same issue, and may include in one certificate all the interest orders or checks for interest on registered bonds; of the same class and same issue."

"All certificates shall be, in size, 8 by 3 inches, and shall be printed to read from left to right along the 8-inch dimension. All certificates claiming exemption shall be printed on yellow paper; all certificates not claiming exemption shall be printed on white paper; and certificate Form 1002, for use by the first bank or collecting agency, shall be printed on green paper. All paper upon which certificates shall be printed shall correspond in weight and texture to white writing paper 21 by 32, about 40 pounds to the ream of 500 sheets. Certificates heretofore authorized, when properly executed, will be accepted up to October 1, 1914. The revised certificates hereby provided will be printed by the Government and furnished without cost for the use of bond owners. All existing regulations which may be in conflict with the prescriptions of this regulation are hereby superseded. *Individuals or organizations desiring to print their own certificates may do so, but certificates so printed

must conform in size and be printed in similar type, upon the same color, shade, and weight of paper as used by the Government."

" *NoTB. - Sample certificates showing size of type and color of paper can be secured from collectors of internal revenue in their several districts or from the Commissioner of Internal- Revenue at WashingtonL D. C."M

89 T. D. 1977. 1988. 40 T. D. 1976_

452 DEBUCTION AT THE SOURCE. [§ 103

None of these certificates need specify the number of the bonds or other corporate obligations for which coupons are detached or upon which registered interest is to be paid.*^ No revenue stamp is required.*^

Banks should exercise care in procuring the full post-offiiee address upon all certificates. When no street address is given, the Treasury Department will assume that the same is not necessary in addressing mail, and certificates will not be returned for that reason.*'

§ 104. Deduction at the source of income derived from foreign countries. The statute provides that "likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed \$3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had hj complying with the foregoing provisions of this paragraph." *

The foregoing provisions, to which reference is made, are described in the preceding section of this work, which relates

■41 T. D. 1022. National Park Bank April 23,

48 T. D. 2049. 1914.

43 Deputy Commissioner Speer to § 104. 1 Act of Oct. 3, 1913, II, E.

§ 104] DEDUCTION OF FOREIGN INCOME. 453

to deduction at the source by corporate mortgagors and by trustees under trust deeds made by them as security for loans.^ "All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court." *

I "Where foreign corporations have an issue of bonds the interest upon which is payable wholly within the United States or within or without the United States at the option of the owner of the bonds, in all cases where said foreign corporations have fiscal agents within the United States and the said bonds are owned by citizens of the United States or aliens resident within the United States, the collection of interest on said bonds shall be considered to be and be treated as a domestic transaction upon the filing with said coupons certificates of ownership properly executed ; Provided, that whenever coupons from foreign bonds not accompanied by certificates of ownership, are presented for collection they shall be treated as foreign items, and the first bank or collecting agency receiving or accepting the same for collection or otherwise shall deduct, withhold and pay the tax as provided by income tax regulations for the collection of foreign income.

"Where a foreign corporation has an issue of registered bonds the interest on which is payable through a fiscal agent in the United States, certificates of exemption may be filed with said fiscal agent in manner and form as prescribed by T. D. 1974

i Supra, § 103. S Ibid

454 DEDUCTION AT THE SOURCE. [§ 104

and payment by said fiscal agent shall be made in accordance with the provisions of T. D. 1974." * The words "foreign corporations" include municipal and private corporations holding charters under laws of countries foreign to the United States.*

The phrase " 'fiscal agents' refers to financial agents in the ordinary sense, upon whom the law casts the same duties with reference to withholding and paying the tax as are imposed upon withholding and paying agents of domestic corporations by appointment. Where a foreign government has a fiscal agent in the United States for the purpose of paying the interest on its obligations, such fiscal agent will be charged with the duty of withholding and paying the tax on such interest payments, except to the extent of exemption claimed. Where such foreign countries or corporations have an issue of bonds payable wholly within the United States or within or without the United States, at the option of the owner of the bonds, and where the coupons from such bonds are presented for payment to the fiscal agent in the United States of such foreign countries or corporations, or for collection to a bank or collecting agency whether licensed or not, with ownership certificate attached, then and in all such cases said coupons shall be treated as domestic items and the aforesaid fiscal agents will be charged with the duties and responsibilities of withholding and paying agents, and will make return on Form 1012 as provided by income tax regulations. Where, however, such coupons are not presented with such ownership certificates attached, they shall be received only by a licensed bank or collecting agency, and when so received shall be considered to be and be treated as foreign items, in accordance with the regulations for the collection of foreign

?J 6

income.

"The following certificate is hereby provided, which may be executed by responsible banks or bankers, either foreign or domestic, for and on behalf of nonresident owners of stock of corporations of foreign countries, for the purpose of claiming exemption from the income to such dividends from such stock :

4T. D. 1992. See T. D. 1974. « T. D. 2006,
Supra, § 103. 8/6td.

§ 104] DEDUCTIOlf OF rOEEIGN INCOME. 455

[Yellow Paper.]

FORM 1071.

TREASURY DEPARTMENT, INTERNAL REVENUE— INCOME TAX.
Exemption Certificate — Banks or Bankers, Either Foreign or Domestic.
(For the use of responsible banlcs or bankers, either foreign or domestic,
for and on behalf of nonresident owners of stock of corporations of foreign
countries.)

(Give name of foreign corporation.)

(Full description of stock, stating whether common or preferred, or both.)

Amount of dividends, \$

I (we) do solemnly declare that the owners of the stock of foreign corporations upon which the aforesaid dividends were declared are non-resident aliens as to the United States and are exempt from the Income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States, wherever residing, or foreigner residing in the United States, or in any of its possessions, has any interest in said stock; and that all of the information as given in this certificate is true and correct. I (we) hereby agree that if at any time it shall appear that the income or any part thereof represented or covered by this certificate was, or is, subject to the normal tax imposed by the United States, upon presentation of proof of that fact to me (us) by, from, or through the Commissioner of Internal Revenue, Washington, D. C., I (we) will pay and remit to the United States Government the amount of tax claimed to be due; and I (we) hereby further agree that whenever in the judgment of the Commissioner of Internal Revenue it shall be necessary in or to the administration of the income-tax law, I (we) will, upon request of said Commissioner of Internal Revenue, disclose and furnish to him the names and addresses of the owners and the amount of the stock aforesaid.

Date, , 191-.

(Name of bank or banker.)

By

(Signature of official authorized to sign.)

(Official position.)

(Full post-office address of bank or banker.)
(Signatures must be clearly and legibly written.)

The above certificate shall be in size 8 by 3¹/₂ inches, and shall be printed to read from left to right along the 8-inch dimension. The certificate shall be printed on yellow paper, and such paper shall correspond in weight and texture to white writing paper, 21 by 33, about 40 pounds to the ream of 500 sheets. The certificate hereby authorized will be printed by the Government and furnished without cost. Banks or bankers desiring to furnish their own certificates may do so, but the certificate so printed must conform in size to that prescribed above and be

450 DEDUCTION AT THE SOURCE. [§ 104

printed in similar type upon the same color, shade, and weight of paper as used by the Government." ' "

The regulations of the Treasury Department provide as follows :

"All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries, and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue.'

"Applications for such license (Form 1017) ' will be made to the collector for the district in which such business is to be carried on. Upon the acceptance of such application the collector will issue to the applicant without cost a license (Form

7 T. D. 2030. Said person, firm or corporation is &

8 Tr. Reg. 54. now engaged in business as and

9 Form 1017. United States Internal Revenue: desires to conduct the business of collecting foreign income at the

Application for license for collection of income from foreign countries: above address or addresses and here- by makes application for the license required to be secured by persons, .

State of County of firms or corporations engaging in

The undersigned (name) the business of collecting income (office) of (name of person from foreign countries under the pro- firm or corporation) being duly sworn according to law, declares of the income tax law of October that on and after the day 3, 1913, and I (we) hereby promise of (191) he intends to engage and pledge myself (ourselves) to' in the business of collecting foreign income payments of interest or dividends of said law and the rules and regulations by means of coupons, checks, bills of exchange of the Treasury Department or bills of exchange. The aggregate which have been or may hereafter amount of annual collections of such be issued in respect to the collection foreign income at the principal and payment of such income.

branch offices is estimated at . (Signed)

The location of the principal and For (name of firm or cor- branch offices is as follows : poration) .

Principal office: Sworn to before me this day

Branch offices: of 191 - ,

(If a firm, state names of members).

§ 104] DEDUCTION OF FOREIGN INCOME. 457

1010) ^^ which will continue in force until revoked or canceled. Blank forms of such license, bearing the facsimile signature of the Commissioner of Internal Revenue, will be furnished collectors on requisition, who will in all cases countersign the same before issuing it to applicant. Failure to obtain a license or to comply with regulations is punishable by a fine not exceeding \$5,000 or imprisonment not exceeding one year, or both, in the discretion of the court." ^^

"Where the collector is not sufficiently informed as to the entire responsibility of the applicant, or where in any case he deems it advisable, the Commissioner of Internal Revenue may upon the recommendation of the collector require of the applicant a bond, in duplicate, with satisfactory sureties, in a penal sum at least equal to the estimated amount of tax to be withheld by such applicant during any one year. A form of bond to be given in such cases will be furnished collectors on application for the same. Where licenses are issued without bond, the collector will each year inquire into and satisfy himself of the financial responsibility of the licensee." ^^

"When any person, firm, or corporation shall have branch offices and desire to collect foreign interest or dividend income through said branch offices, the application for license or licenses shall be made by the person, firm, or corporation through its principal office for its branch office or offices.** Application

10 Form 1010. foreign joint ,atoel<: companies or as-

Treasury Department. associations, or foreign insurance com-

Office of the Commissioner of Internal Revenue. companies engaged in business in foreign countries, from , 191.., until

License for collection of foreign revoked,

income. "This license will not be valid un-

, located and doing business till countersigned by the collector of

at and engaged in the business internal revenue for the district in

ness of , having made application which issued.

tion in accordance with the provi- Countersigned:
sions of section 11 of the act of () collector (dis-
October 3, 1913, and the regulations trict).
made in pursuance thereof, is hereby H Tr. Reg. 55.
licensed to accept for collection cou- 12 Tr. Reg. 56.
pons, checks and bills of exchange 13 By the preliminary regulations:
for or in payment of interest upon "When any person, firm or cor-
bonds issued in foreign countries and poration has branch offices and de-
upon foreign mortgages or like ob- sires to collect said foreign interest
ligations and for the dividends up- or dividend income through said
on stock of foreign corporations branch ofSces the application for li-

458 DEDUCTION AT THE SOUEECE. [§ 104

for licenses in such cases shall be made to the collector of in-
ternal revenue for the district in which the home office is
located. The names and addresses of the branch offices shall be
furnished to the collector in the application of the said prin-
cipal, and if the requirements of the foregoing regulations
have been complied with to the satisfaction of the collector,
he shall certify this fact to the collector of internal revenue
for the district in which the branch office is located, and the
collector to whom this certification is made shall issue to such
branch office a license, as in the case provided in article 55." "

"The licensed person, firm or corporation first receiving such
foreign items for collection, or otherwise, shall withhold there-
from the normal tax of one per cent., and will be held respon-
sible therefor. If the foreign item is in the form of a check or

bill of exchange, the words 'Income Tax withheld by '

(giving name, address and date) shall be endorsed or stamped
thereon by such licensee ; but if the item is represented by a
coupon or coupons .from bonds, the licensee shall attach there-
to a statement identifying the same, and the endorsement or
stamp showing the tax withheld shall be placed on the state-
ment instead of the coupon or coupons.

"Said endorsement or stamp shall be a sufficient evidence
of tax withheld to relieve subsequent holders or purchasers
from the obligations of withholding." "

"Such licensee shall obtain the names and addresses of the
persons from whom such items are received and shall prepare

a list of same in duplicate (on Form 1043) ^^ and file it with the collector of internal revenue for his district not later than the 20th day of the month next succeeding the month in which such items were paid. The list shall be dated, and shall contain the names and addresses of the taxable persons, the character and amount of income, amount of exemption claimed, amount

cense or licenses shall be made (and ofSce and its branch office or offices."

bond furnished when a bond is re- T. D. 1909, Nov. 28, 1913.

quired) by the person, firm or cor- 1* Tr. Reg. 57.

poration through its principal office 15 Tr. Reg. 58 as amended T. D.

for its branch office or offices. The 2023.

bond in such cases shall be based 16 Form 1043 is printed in full

on the total amount of such foreign supra, § 81.

business transacted by both the home

^ 104] DEDUCTIOlf OF FOEEIGN INCOME. 459

■of income on which withholding agent is liable for tax, and the amount of tax withheld. In addition to the monthly lists the licensee will, on or before the 1st day of March in each year, file with the collector in duplicate a return (Form 1043a) ^' showing the amount of income paid and the amount of tax withheld by him during the preceding year and such other information as the form prescribes.

"The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by the licensee as withholding agent, and he will not be required, in making an annual list return of the tax withheld from income described in article 54, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.^'

"In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the exemptions allowable under paragraph C (arts. 9 and 10), such individual shall be permitted to avail himself of the exemption claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, '^ and no tax shall be deducted for the amount of the oxemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted." ^°

"In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid, and "with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse or stamp thereon the words 'Income tax exemption claimed throu^' giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

" Form 1043a is printed In full 19 Form 1000 B printed in full supra, § 81. pra, % 103.

18 Tr. Keg. 59. »0 Tr. Keg. 60.

460

DEDUCTION AT THE SOURCE.

[§ 104

"The provisions for collection of the tax on foreign obligations herein set forth includes the interest upon all foreign bonds, even though the coupons may, at the option of the holder, be payable in the United States as well as in some-foreign coimtry." ^^

"All persons licensed shall keep their records in such manner- as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers." "^

21 Tr. Eeg. 61.

2a Tr. Eeg. 62.

Treasury Department,

Washington, D. C, April 4, 1914
Messrs. Boissevain & Co.,

24 Broad St., N. Y. City.
Sirs:

This office has your letter of April first ill which you state :

We have received from the Canadi-

an Pacific Eailway Company, a, foreign corporation, one cheque covering a dividend on 250 shares of stock; 200 of tliese shares belong to our clients, but as to the 50 shares, while registered in our name, we have no Icknowledge of the owner thereof.

You further state that you can secure ownersliip certificates to cover the 200 shares, but are unable to secure certificates to cover the 50 shares, and request information as to what course to pursue in order that you may cash such cheque and pay to each linown shareholder the amount derived from same to which he or she may be entitled.

You are advised that ownership certificates to cover the 200 shares belonging to known shareholders

should be obtained. In lieu of such certificates to cover tlie remaining 50 shares, you should e.^ecute a certificate. Form 1002, to cover eacli. individual share, and deduct the normal tax of 1% from the amount of income derived from same, and make return of amount withheld to the Collector. If, at a later date^ a. certificate covering -any such item and claiming exemption is received,, it should be forwarded witli your next monthly list return to the said Collector.

The Collector upon receipt of such a certificate, providing it is received not later than thirty days prior to March first of the next succeeding year, will make a proper notation on the monthly and annual list returns rendered by you, and acknowledge the receipt of the certificate, and, after receipt of such acknowledgment, the amount of tax withheld upon the item covered by the certificate may be released by you to the individual entitled to receive the same.

Respectfully,

L. F. Speee,
Deputy Commissioner

CHAPTER IX.

COLLECTION OF THE TAX.

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

"It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all collected by him." *

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

Similar provisions of the statute in question do not describe this liability of interest as a penalty. They provide that "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per

§ 105. 1U. S. E. S., § 3172, (U. S. R. S., § 3183 (U. S. Comp. Stat. Comp. Stat. 1901, p. 2065), as Stat. 1901, p. 2072). :amended by Act of October 3, 1913, 30 U. S. R. S., § 3184 (U. S. Comp. Stat. 1901, p. 2072).

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462 COLLECTION OF THE TAX. [§ 105

centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons." *

This notice and demand is necessary in order to entitle the Government to a lien upon the property, and to enable it to distrain for the tax and to impose a penalty upon the taxpayer.*

The Treasury Regulations direct:

"When assessment has been made, collectors will, on receipt of their returned lists, at once issue preliminary notices of assessment (Form 647) ^ and where in any case the tax assessed

4 Act of October 3, 1913, II, sub- &V. 8. v. Bristol, 20 Fed. 378.. section E. See infra, § 107.

6 FORM 647.

tnsritED STATES INTERNAL REVENUE.
NOTICE OF ASSESSMENT OF SPECIAL EXCISE AND INCOME TAX.

United States Internal REVENTiB,

OrPIOE OF THE COIXECTOB

List for month of , 191

To District of

At

., 191

You are hereby notified that a special excise tax (income tax) under the provisions of section 38 of the Act of August 5, 1909, (2 of the Act

of October 3, 1913,) amounting to \$, has been assessed

against you by the Commissioner of Internal Revenue and transmitted by him to me for collection. This tax is due and payable on or before

the , 191. ., to the person designated below in the

manner set forth on the reverse side of this notice.

Payment may be made to

At

(Post-office address.)

Or to , Collector.

Bring this notice with you.

[ENDORSEMENT.]

To avoid penalty and interest, taxes must be paid to the collector or person designated by him in such a manner as will enable him to place the same with his depository and receive a certificate of deposit therefor not later than the close of business of the date mentioned in the body of" this notice.

§ 105] DEMAND. 4:03.

is not paid on or before the 30th day of June, or in case of corporations designating their own fiscal year, within 120 days following the date on which the return should have been filed,, notice and demand (Form 17) ' should be at once issued, and

Payment may be made in currency, post-office money order, or certified check on a national or state bank or trust company, providing such checks, can be collected without cost to the Government. It should be borne in mind by taxpayers that the date when such checks may be cashed and the money deposited is the date of payment, and allowance should be made accordingly.

Collectors can not receive in payment of taxes uncertified checks, personal checks, drafts, or vouchers, and all indorsements by collectors on certified checks are made without recourse. Money orders and certified, checks must be made payable to the Collector of Internal Revenue.

1 FORM 17.

UNITED STATES INTERNAL REVENUE.
NOTICE OF AND DEMAND FOR TAX ASSESSED.

United States Internal Revenue,,
office of the collectoe.

List for month of , 191

Division.

To District of

At

, 191

You are hereby notified that a tax, under the Internal Revenue Laws.

of the United States, amounting to \$, the same being a tax upon

for the period ending , has been assessed against you by the Commissioner of Internal Revenue and transmitted by him to me for collection.

Demand is here made for this tax, which is due and payable to the person designated below on or before , 191 , such payment to be made in the manner set forth on the reverse side of this Notice and Demand. If this tax is not in my hands for deposit before the close of business of the day above specified it will become my duty, under the law, to collect the same together with 5 per centum additional,, and interest at 1 per centum per month until paid.

Payment may be made to
At

(Post-office address.)

Bring this notice with you. Or to , Collector..

[ENDORSEMENT.]

To avoid penalty and interest, taxes must be paid to the collector or person designated by him in such a manner as will enable him to place-

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unless the tax in such case is paid within 10 days after the service of such notice, general demand for tax, penalty, and interest (Form 21) * should at once be issued. Immediate notice

the same with his depository and receive a certificate of deposit therefor not later than the close of business of the date mentioned in the body of this notice.

Payment may be made in currency, post-office money order, or certified check on a national or state bank or trust company, providing such checks can be collected without cost to the Government. It should be borne in mind by taxpayers that the date when such checks may be cashed and the money deposited is the date of payment, and allowance should be made accordingly.

Collectors can not receive in payment of taxes uncertified checks, personal checks, drafts, or vouchers, and all indorsements by collectors on certified checks are made without recourse. Money orders and certified checks must be made payable to the Collector of Internal Revenue.

8 FORM 21.

UNITED STATES INTERNAL REVENUE.
SECOND NOTICE OF AND DEMAND FOR TAX ASSESSED.

List for Month of , 191 , Division.

United States Internal Revenue,
office of the collector,
To District of

At At

, 191 .

Your attention is called to a notice of and demand for assessed tax
(Form 17), dated , 191 , notifying you of and demanding the
payment of the said tax amounting to \$ assessed against you on
account of for the period ending ,] 91 .

The said tax not having been paid within the time required by law,
as stated in the said notice and demand, you became liable to pay a pen-
alty of 5 per centum additional upon the amount of this tax, and interest
at the rate of 1 per centum per month from , 191 , and

DEMAND is hereby made upon you for the said tax, with the penalty and
such interest as may accrue before payment.

If the said tax, penalty, and accrued interest are not paid within ten
days from the date hereof, in the manner described on the reverse side of
this form, it will become my duty to collect the same, with costs, by
seizure and sale of property under warrant of distraint.

Payment may be made to

Amount of tax \$ At

(Post-office address.)

5 per cent penalty Or to

Total \$ Collector.

[ENDORSEMENT.]

Payment may be made in currency, post-office money order, or certi-
fied check on a National or State bank or trust company, providing such
checks can be collected without cost to the Government. It should also be
borne in mind by taxpayers that the date when such checks may be cashed

§ 105], DEMAND. 465

and demand (Form 17) will, however, be served in case of failure to file the required return within the statutory period.'

"Pending assessment on returns forwarded to the commissioner, collectors will have prepared the necessary notices of assessment, with properly addressed envelopes, to be used immediately on return of their assessment lists." ^°

"Statements of payment, abatement, and outstanding balances of such assessed taxes will be rendered monthly by collectors on special Form 325.^'* Such statements will be prepared in the same manner as required in the case of assessments on the regular Form 23,*^ except that in Statement III the outstanding balances on the various lists will be reported in aggregate only. Items constituting such balances, however, will be carded by collectors, but only as to such as were assessed during the month for which the return is rendered, thus avoiding detailed statements each month of outstanding balances previously reported. A separate card (Form 1020) ^' will be used for each such item; and all cards so prepared each month should be arranged alphabetically, and so forwarded by the collector with his report on special Form 325." "

and the money deposited is the date of payment, and allowance should be made accordingly.

Collectors can not receive in payment of taxes uncertified checks, personal checks, drafts, or vouchers, and all indorsements by collectors on certified checks are made without recourse. Money orders and certified checks must be made payable to the Collector of Internal Revenue.

9 Tr. Reg. 197. W> Tr. Eeg. 108.

*For footnotes 11-14 see pp. 466-470.
Foster Income Tax. — 30.

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COLLECTION OF THE TAX.

[§ 10^

11 Special Form 325. — Prescribed December 11, 1913.
UNITED STATES INTERNAL REVENUE.

Report of Payments, Abatements, and Balances Outstanding for the

Month of , 191 . . , of Taxes and Penalties assessed on Forms

23A and 23B, not paid at the close of the month for which said forms
were prepared, in the District of

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Name.

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Period of Liability,
Year Ending -

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§ 105]

DEMAND.

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STATIIMENT KO. IV.- RECAPITULATION BY ASSESSMENT LIST.

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Monthly List.

Balance from
Last Month and
Charged during
this Month.*

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Totals

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* Including transfers from other districts.
t Including transfers to other districts.

Dated at

this day of ,19 Collector of the

Dist. of

468 COLLECTION OF THE TAX. [\$ 105

[ENDORSEMENT.]
Special Form 325.

UNITED STATES INTERNAL REVENUE.

Report of Payments, Abatements, and Balances Outstanding for the
month of , 19 of taxes and penalties assessed on
Forms 23A and 23B, in the District of

INDORSEMENTS IN THE OFFICE OF THE COMMISSIONER OF
INTERNAL REVENUE.

Examined and compared with the accounts in this Division as to pay-
ments, abatements, transfers, and balances outstanding, and found to be
correct this day of , 19

Cleric in Division of Accounts.
Approved :

Head of Division.

Examined and compared with record of abatements, and this day of , 19 found to be correct.

Clerk in Division of Claims.

Approved :

Head of Division.

Examined, compared with last previous report on this form, also with Forms 23A and 23B, and 58, proper entries made, and found this day of ,19 , to be correct.

Clerk in Assessment Division.

Approved :

Head of Division.

§ 105] DEMAND. 469

assessment division.
Instbuctions.

1. Each collector will forward to the Commissioner of Internal Revenue a monthly report on this form, such report to be rendered on the first day of the month or within five days thereafter.

2. Special Form 325 will be made up in four statements, viz: Statement I, Payments made during the month ; Statement II, Abatements made during the month; Statement III, Balances outstanding at the end of the month; and Statement IV, Recapitulation by assessment lists. Headings for Statements II and III will be entered on the form by the collector to suit the entries necessary under each heading. No items will be taken up on this form except those appearing on "back" lists— that is, items on the January list will not be taken up until the February report and then only such items as were unaccounted for on February 1.

In entering income taxes under the first three statements such taxes will be entered in column 4; the 50 per cent and 100 per cent penalties in column 5. This is very important, as taxes and penalties must be kept separate for statistical purposes. Entries must be made from assessment lists and so arranged that the folios and lines of each list noted will be in consecutive order. The serial number of each tax receipt, Form I,

should be stated in full. Separate books, Form I, will be used for all payments relative to the income taxes - one for corporations, Form 23A, and one for individuals. Form 23B.

3. Credits may be taken in three ways, as follows: (a) by payments, (6) by abatements, and (c) by transfer to another district under Section 3209 E. S.

(a) When credits are taken by payments, the entries will be made in detail under Statement I in the regular order of the lists by months, giving the number of receipts. Form I. It sometimes occurs that a partial payment of an assessed tax is made. In such cases credit will be taken, under Statement I, on this form for the amount paid, and a receipt on Form I issued to the taxpayer, and the balance will be included in the aggregate reported under Statement III. When the unassessed 5 per cent penalty, or interest at 1 per cent per month, or both, accrue and are collected during the same month the tax is paid, the amount will be reported in columns 9 and 10 of this form and on Form 58. For the method of computing the 5 per cent penalty and interest at 1 per cent per month, see Regulations No. 1, pp. 109-11, and Reg. No. 14, p. 16. See also T. D. No. 870, February 27, 1905, and Sections 3184 and 3185 R. S., compilation of 1911, and the various citations thereunder. Proper entries must be made in each column as indicated by the headings thereof.

(6) Credits by abatements will be entered under Statement II, and entries made in detail in the regular order of the lists by dates and proper entries made in each column as indicated by the headings thereof. Instructions as to the manner of making claims for abatements and the proper forms to be used have been carefully prepared and embodied in Regulations No. 14. Taxes paid after abatement and abatements in excess should not be taken up on this form.

(c) When credit is taken because of the transfer of a tax to another collection district, under Section 3209 R. S., the entry should be made under Statement II in red ink. A transcript of the amount to be transferred will be made on Form 514 and forwarded with Form 51B. The receiving collector will report on this form the amount transferred to him for collection as though the liability had been incurred in his own district. Charges or credits entered in the recapitulation because of such transfers

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should be entered in red ink with the necessary explanation to distinguish them from other charges or credits reported thereon, and should be so reported until the same are paid or abated.

4. All credits must be taken in the month in which payments, abatements, or transfers are made.

5. As soon as the original assessment lists, Forms 23A and 23B, are received back from the Commissioner by the collector, a card, Form 1020, will be prepared in duplicate for each item of assessment, giving all the information required above the dividing line of said card. If the tax so assessed has been paid, such payment will also be noted on the cards. One of these cards will be forwarded to the Commissioner on or before the date

when the next report on Form 325 is due. These cards will be used in lieu of reporting these items in detail under Statement III of Form 325 from month to month until paid or abated, and will thereby materially lessen not only the clerical work in preparing these reports, but the danger of errors in retranscribing into such reports the balances still outstanding on the various assessment lists. If properly kept, such cards will be a complete index of all persons, etc., paying income tax. The duplicate cards retained in the collectors' offices should be arranged in such a manner that the proper time of issuing the various collection forms can be carefully watched, thus avoiding delay in collecting the tax due and the loss of 5 per cent penalty and interest that would accrue if said forms were promptly issued. As to the best manner of filing these cards the collector will no doubt readily solve, but should he desire, the method pursued in the Commissioner's office will be explained on request. The balances outstanding on Forms 23A and 23B may be reported in the aggregate under Statement III until the expiration of the 120 days from the date of filing the return, after which proper entries will be made in the first six columns, and in columns 6 to 10, inclusive, a note of explanation should be made as to the exact status of the balance, whether claim is pending, and if such is the case the number of form and date should be given. If no claim is pending, a statement should be furnished showing what efforts are being made to collect the tax, dates of Forms 17 and 21, date of filing of lien (T. D. 1841) and Form 69, or otherwise explain why the same has not been collected.

6. The totals of all lists should be made in Statements I, II, and III and entered in red ink. The grand total of each statement should be treated in the same manner.

7. The headings of columns of Statement IV are such that special instructions are not deemed necessary. When taking up a list for the first time under Statement IV, the whole amount of the list will be entered on the margin in the same manner as on Form 51B.

8. The items on Form 23A will be taken up first under Statement I, followed by items on Form 23B. The same arrangements will be observed as to Statements II, III, and IV.

9. Failure to follow the above instructions will necessitate the return of the form for correction to the collector rendering the same.

12 Form 23. Supra, § 89.

.Dist.

Name,

(Of corporation or individual.)

(Post-office address.)

1*Tr. Reg. 199.

§ 106] PEKALTIES JJOE DEKAUET IN PAYMENT. ' 471

§ 106. Penalties for default in payment. The Act provides: "That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000." ^ The Act further provides : that, as regards both individuals* and corporations, joint-stock companies or -associations, and insurance companies,^ "to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became," - in the case of corporations, joint-stock companies or associations, and insurance companies, "becomes" * - "due, except from the estates

List, Form , For , Folio , Line

(23 A or 23b.) (Month.) (Year.)

For Year Ending , 191 Tax Due , 191

Amount of Tax, \$ 50% Pen., \$ 100% Pen., \$

Paid , 191 Serial No. Receipt

, , , J im (Erroneous.

^^^^^ '191 {uncollectible.

Serial No. Abt.

(over)

Uemabks, Reference to Cobbespondence, Etc.

Assessment Division, Internal Revenue - Form 1020^Ed. 600,000 -
Dec. 11-13.

§ 106. 1Act of October 3, 1913, 3 /6td. Subsection G (c),
11, Subsection F. *Ibid. Subsection G (c).

2 Ibid. Subsection E.

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of insane, deceased, or insolvent persons," the last clause being contained only in that part of the statute which applies to individuals. It will be observed that this addition of 5 per centum, with interest at the rate of 1 per centum a month, is not described in the statute as a penalty. Interest does not run until ten days after service of notice and demand.** In cases of residence or travel of the taxpayers in foreign countries, the interest is charged by the Treasury Department ten days subsequent to the time when the notice sent should have reached them in the ordinary course of the mails, unless satisfactory evidence of delay in the mails is presented.*' "You are advised that this office is of the opinion that the cases referred to in the law where the assessments should be made by the Commissioner of Internal Revenue and paid immediately upon notification of the amount of such assessment relate to delinquent corporations who have failed to file returns until after the final day on which taxes should be paid in the regular course, viz., June 30. Under this construction, therefore, it will be seen that in cases of individuals and corporations whose delinquency was disclosed prior to July 1 or prior to the termination of the 120-day period following the day when the return was due to be filed, the demand and notice on Form 17 should not be served until July 1 or on the day following the termination of the 120-day period after the return was due and the 5 per cent penalty should not be demanded until the expiration of the 10-day period following the serving of such demand and notice. Where, however, such demand and notice has been served and payment of the 5 per cent penalty made before the termination of the 10-day period following June 30, the corporations by whom such payments have been made should be advised of their privilege to file claim for refund." *°

The Revised Statutes provide, in regard to Internal Revenue taxes : "When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due ; but no interest for a fraction of a month shall be

*aT. D. 199». 2nd District, June 26, 1914, T. D..

ibT. D. 2028. 2003. See V. S. v. Bristol, 20 Fed.

*o Com'r. Osborn to Collector of 378.

§ 107] LIENS. 473

demand : Provided, That notice of the time when such tax becomes due and payable is given in such manner as may be pre-

scribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month, as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law ; and if said tax, penalty, and interest are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law." *

A similar section has been held constitutional.*

Where the refusal to pay taxes was induced by inconsistent Department rulings after suit for the statutory penalty was pending, the court refused to allow interest to the Government in a suit for the collection of the tax.''

In a suit in equity to recover the amount of a tax imposed by a State statute, with interest at the rate of twelve per cent until paid, the defendant admitted part of the tax to be due, and paid the amount admitted into court, with twelve per cent interest. The sum so paid was greater than the interest then accrued upon the whole tax for which suit was brought. It was held that the amount paid into court should be applied, in accordance with the defendant's contention, to the principal and interest admitted to be due, and further, that on the remainder of the tax decreed to be due, the interest should be computed at the rate of twelve per cent, until the date of the decree and thereafter only at six per cent.*

§ 107. Liens. The Revised Statutes provide that "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to

SU. S. Rev. Stat. § 3185, U. S. Int. Rev. Rec. 193, Fed. Cas. No.

Comp. Stat. 1901, p. 2072. 979- , ^ ^^

6 Dnll V Evans 9 Phila 364 Massachusetts v. Western Union

,r7 t n T' V ■ « 7 ^^ ^«^- <^°- 141 U. S. 40, 35 L. ed. 628,

' a. 8. V. Dollar Samngs BamJc, 15 ^ g^p^ ct. Rep. 889.

47i COLLECTION OF THE TAX. [§ 107

said person." ^ in'o lien arises until after assessment, notice, demand,^ and refusal to pay.* The demand must specify the amount of the tax.* It should be in writing.' The validity of such lien is not affected by the failure to comply with a state law which requires all liens to be recorded.® This lien is not

displaced by a judicial sale of the property under a pre-existing judgment or for the foreclosure of a pre-existing mortgage or other lien," except possibly one for State or Federal taxes previously imposed. The United States are not estopped by any statements of the collector or other Federal officer that the property is not subject to their lien.* The proceedings to enforce the lien are described hereafter.'

§ 108. Distraint. The Revised Statutes provide that "If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars, the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not

§ 107. 1 U. S. Rev. Stat. § 3186, 4 V. B. v. Poci^c B. R. 4 Dill. 66, as amended by Act of March 1, 71, Fed. Cas. No. 15,983, 15,984. 1879, chapter 125, § 3, 20 Stat. « V. B. v. Allen, 14 Fed. 263, 267. at L. 327; 1 U. S. Rev. Stat. Supp. 6 [/. 8. v. Snyder, 149 U. S. 210, 2d ed. p. 226, U. S. Comp. Stat. 37 L. ed. 705, 13 Sup. Ct. Rep. 846; - 1901, p. 2073. On general question Arnson v. Murphy, 109 U. S. 238, of priority of claims for taxes 27 L. ed. 920, 3 Sup. Ct. Rep. 167. against the assets of a debtor, see ' Osterberg v. Union Trust Co. 93 note in 29 L.R.A. 278. U. S. 424, 23 L. ed. 964. See, how- 2 V. 8. V. Pacific R. R. 1 McCrary, ever. Department Ruling of January 1, 1 Fed. 97. See s. c. 4 Dill. 66, 25, 1866, I. R. R. 37. Fed. Cas. No. 15, 983; s. c. 4 Dill. ^ Alkam, v. Bean, 8 Biss. 83, 23 71, Fed. Cas. No. 15, 984; XJ. 8. v. Int. Rev. Rec. 351, Fed. Cas. No. Allen, 14 Fed. 263; Brown v. Goodr 202. «rin, 75 N. Y. 409. 9/»/ro, §91. S Brown v. Qoodvnn, 75 N. Y. 409.

greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt." ^ This mode of collection is constitutional.^ State exemption laws do not apply to proceedings to collect debts due to the United States.'

"In such cases of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, ■or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.*

"All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distraint or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint, for the tax due as aforesaid.'

"When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted

§ 108. 1 U. S. Rev. Stat, section 3 U. S. v. Boioell, 9 Fed. 674.

3187, U. S. Comp. Stat. 1901, p. 4U. S. Rev. Stat. § 3188. See

2073. Eartman v. Bean, 99 U. S. 393,

2 Springer v. U. S. 102 U. S. 586, 25 L. ed. 455.

26 L. ed. 253; quoted supra, § 20. B U. S. Rev. Stat. § 3189.

at the post-office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days." *

"When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expense of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon." ''

"When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees." * The debt originally due by virtue of the assessment of the tax is merged in the tax sale and the purchase thereof, to the extent at least of the purchase price.®

"In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if prior to the sale payment

6U. S. Rev. Stat. § 3190. 9 Z7. /S. v. Wilson. 118 U. S. 86,

7U. S. Rev. Stat. § 3192. 88, 89.

«U. S. Rev. Stat. § 3191.

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of the amount due is made to the proper officer charged with the collection, together with the fees and other charges ; but in the case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission

of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same." "

"In all cases of sale, as aforesaid, the certificate of such sale shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all the right, title, and interest of such delinquent in And to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt." ^^

"When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same ; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support there-

10 U. S. Rev. Stat. § 3193. n U. S. Rev. Stat. § 3194.

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of, shall, by warrant on the Treasury, cause the same to be paid to the applicant." ^^

"When goods, chattels, or effects, sufficient to satisfy the tax imposed upon any person, are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate." ^*

"The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be

less than twenty nor more than forty days from the time of giving said notice.

"The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate to be seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue.

"At the time and place appointed, the officer making such seizures shall proceed to sell the said estate at public auction, offering the same at a minimum price including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars.

"When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid.

"If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased

12 U. S. Ev. Stat. § 3195. See also *Brown v. Oodvoim*, 75 N-

13 U. S. Rev. Stat. § 3196. Y. 409.

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by him for the United States ; otherwise the same shall be declared to be sold to the highest bidder.

"And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situated, and shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deeds to the Commissioner of Internal Revenue.

"And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

"And it is hereby provided, that all certificates of purchase,

and deeds of property purchased by the United States under the Internal Revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

"And it is hereby further provided, that for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns." ^*

"Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time here-

14 U. S. Eev. Stat. § 3197, aa 1 U. S. Eev. Stat. Supp. 2d Ed. 227, amended by Act of March 1, 1879, U. S. Comp. Stat. 1901, p. 2077. 20 Stat, at L. 227, § 3, chap. 125:

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after provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the state in which such real estate is situated upon the subject of sales of real estate under execution." ^*

"The deed of sale given in pursuance of the preceding section shall be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto." "

The deed is not prima facie evidence of the facts which the statute does not require to be included in its recitals, but which are necessary to the validity of the sale : " such as the notice and the assessment of the tax, the demand of payment, the failure to find personal estate to satisfy the distress warrant and the notice of seizure of the real estate.^'

Where two lots of real estate were occupied as a homestead with a house upon one lot and a bam on the other, although they had been assessed separately for state taxation, it was held that their sale in one parcel for income taxes was not void, but

was properly made within the discretion of the collector, although the state statute directed that such lots should be sold separately."

"Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the state in which such officer resides ; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district." *»

"Any person whose estate may be proceeded against as afore-

15 U. S. Rev. Stat. § 3198. 19 Springer v. U. S. 102 U. S. 586,

16 U. S. Rev. Stat. § 3199. 26 L. ed. 253.

11 Fox v. Stafford, 90 N. C. 296; 20 U. S. Rev. Stat. § 3200.
Broum v. Oodvrm, 75 N. Y. 409.

18 Brown v. Oodiovn, 75 N. Y. 409,
415.

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said shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment." ^*

"The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time vs^ithin one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum." ^*

"It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any

other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated." ^*

"When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption." "*"

"Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient

21 U. S. Rev. Stat. § 3201. 23 u. S. Rev. Stat. § 3203.

22 U. S. Rev. Stat. §-3202. 2* U. S. Rev. Stat. § 3204.

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to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid." ^*

"The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures ; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary." ^^

"The gross amount of all taxes and revenues received or collected by virtue of this Title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any description; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the Treasurer, assistant treasurer, designated depository, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: Provided, That in districts, where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper Government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month." ^^

"When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy

collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation." ^*

"Whenever a collector has on any list duly returned to him

25 U. S. Rev. Stat. § 3205. 28 u. S. Rev. Stat. § 3225 (U. S.

26 u. S. Rev. Stat. § 3206. Comp. Stat. 1901, p. 2088).

27 u. S. Rev. Stat. § 3210.

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the name of any person not -within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his own collection-district ; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him." ^'

§ 109. Suits by the United States to collect the income tax. The United States is not confined to the summary remedies granted by the Revised Statutes, but may also collect the income tax and the penalties therein imposed by an action at law or a suit in equity.' This may be by either a suit to foreclose the lien ; " or an action to collect the tax, interest, and penalties.* The collection of the tax with interest and the collection of the penalties may be by separate suits.*

"1^0 suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: Provided, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit."

"It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals,

»U. S. Eev. Stat. § 3209. 4 17. 8. v. Dollwr Savings Bank,

§ 109. 1U. S. Eev. Stat. § 3213. 15 R. I. R. 193.

2 U. S. Rev. Stat. § 3207, infra, § S u. S. Rev. Stat. § 3214.
110.

3 U. S. Rev. Stat. § 3213, infra, §

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respecting suits arising under the Internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws." ®

"All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to the collectors as internal taxes are required to be paid." '

"It shall be lawful for any court in which any suit or criminal proceeding arising under any internal revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney." *

§ 110. Suits by the United States to foreclose liens for taxes. A suit by the United States to foreclose their lien for taxes, although less expeditious than a statutory sale, may be more prudent when the amount of the tax is large, since a judicial sale under the decree of a court will produce higher bids on account of the greater security on his title which the purchaser thus obtains.

The Revised Statutes provide that "In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a District or Circuit Court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid, shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to. adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree

«U. S. Rev. Stat. § 3215. «U. S. Rev. Stat. § 3231.

TU. S. Rev. Stat § 3216.

^ 111] SUITS IN PERSONAM. 4:85

a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States." ^ Other suits to enforce liens by the United States can ordinarily be brought only in the District Courts.*

§111. Suits in personam by the United States to collect internal revenue taxes. The United States may sue in *mdebitatus assumpsit* to collect an income tax or any other internal revenue tax.* Such a suit may be brought even where no assessment has been made.*

Such a suit may be brought in case an assessment has been made and paid when the collector subsequently discovers that the first assessment was inadequate.* Such an action may be brought after the statutory time for the assessment has elapsed.* Laches will not bar such an action by the United States,* at least unless it is shown that the delay has prejudiced the defendant through the loss of evidence material to the defense.*

Where the United States sues without any assessment, the burden of proof rests upon the plaintiff; but where an action was brought to collect income taxes for a period of ten years, the court denied the defendant a bill of particulars on the ground that he knew the details of his own income although he swore that he was "ignorant of the particulars of the claim against him." '

The Supreme Court said : "An assessment is not required by the act, or, if made, conclusive upon either party, and that in

§ 110. 1U. S. Rev. Stat. 3107, CfRe^i. 627; U. S. v. Thompson, S»

U. S. Comp. Stat. 1901, p. 2081. U. S. 486, 25 L. ed. 194; V. 8. v.

2 36 Stat, at L. 1087, § 24. Of. Beebe, 127 U. S. 338, 32 L. ed. 121, Coffey V. V. 8. 116 U. S. 427, 29 8 Sup. Ct. Rep. 1083; U. 8. v. Bar-L. ed. 681, 6 Sup. Ct. Rep. 432. ley, 130 U. S. 263, 32 L. ed. 968, 9

§ 111. 1U. S. Rev. Stat. § 3213. Sup. Ct. Rep. 485; V. 8. v. Dalles

^King v. 17. 8. 99 U. S. 229, 25 L. Military Road Go. HO U. S. 599, 35

ed. 373; Dollar Savings Bank v. V. L. ed. 560, 11 Sup. Ct. Rep. 988.

8. 19 Wall. 227, 22 L. ed. 80; U. 8. & King v. U. 8. 99 U. S. 229, 25 L.

v. Tilden, 24 Int. Rev. Rec. 99, Fed. ed. 373.

Cas. No. 16,519. e Little Miami, etc. R. R. Co. r.

3 King v. D. 8. 99 U. S. 229, 25 L. V. 8. 108 U. S. 277, 280, 27 L. ed. ed. 373. 724, 725, 2 Sup. Ct. Rep. 627; 17. S.

* U. 8. v. Tilden, 24 Int. Rev. Ree. v. Little Miami, etc. R. R. Co. 1 Fed. 99, Fed. Cas. No. 16,519; Little Mia- 700.

mi, etc. R. R. Co. v. V. 8. 108 U. S. 7 jj. 8. v. Tilden, 10 Ben. 547, Fe4. 277, 280, 27 L. ed. 724, 725, 2 Sup. Cas. No. 16,521.

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an action to recover the tax the controlling question is not what has been assessed but what is by law due." *

The result of a suit for the taxes of one year is not res adjudicata in suits for the taxes of subsequent years except in so far as the decision is binding as a precedent^

The Revised Statutes provide that "Taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any Circuit or District Court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action."^" No State statute can cut off or limit this remedy.^*

All judgments recovered in such suits must be paid to the collector of the district.**

§ 112. Suits to collect penalties. The Revised Statutes concerning internal revenue provide that "It shall be the duty of the collectors, in their respective districts, subject to the provisions of this title, to prosecute for the recovery of any sums that may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tarn or otherwise, before any Circuit or District Court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction." * The penalty may also be levied with the tax by distress without suit.^ Separate suits for the tax with interest, and for the penalty may be maintained concurrently ; * but only one penalty, can be recovered for all failures to make a return prior to the commencement of the action.*

The United States are not subject to costs when the suit is brought on information received from a person other than a

8 V. 8. V. Philadelphia- & Reading § 112. 1 U. S. Rev. Stat. § 3213. B. R. Co. 123 U. S. 113, 114, 38 L. 2 u. S. Rev. Stat. § 3185; supra, ed. 138, 139, 8 Sup. Ct. Rep. 77, per § 96.

Mr. Justice Gbat. 8 U. S. v. Dollar Savings Bank, 15

9 LaJce Shore, etc. R. R. Co. v. Int. Rev. Ree. 193, Fed. Cas. No. People, 46 Mich. 193, 9 N. W. 249. 14,979.

10 U. S. Rev. Stat. § 3213. * TJ. 8. v. Brooklyn, etc. Ry. Co.

11 Dollar Savings Bank v. V. 8. 14 Fed. 284 ; V. 8. v. N. Y. Guarant-
19 Wall. 227, 239, 22 L. ed. 80, 82. tee, etc. Co. 8 Ben. 269, Fed. Gas.

12 U. S. Rev. otat. § 3216. No. 15,872.

§ 113] COMPROMISES. 487

collector or deputy collector." All judgments for penalties re-
covered by the United States must be paid to the collector in
the same manner as internal taxes.^

§ 113. Compromises. The Eevised Statutes provide that
'The Commissioner of Internal Eevenue, with the advice and
consent of the Secretary of the Treasury, may comproraise any
civil or criminal case arising under the internal revenue laws
instead of commencing suit thereon; and, with the advice and
consent of the said Secretary and the recommendation of the
Attorney General, he may compromise any such case after a
suit thereon has been commenced. Whenever a compromise is
made in any case there shall be placed on file in the office of the
Commissioner the opinion of the Solicitor of Internal Eevenue,
or of the officer acting as such, with his reasons therefor, with a
statement of the amount of tax assessad, the amount of addi-
tional tax or penalty imposed by law in consequence of the ne-
glect or delinquency of the person against whom the tax is
assessed, and the amount actually paid in accordance with the
terms of the compromise." ^

An agreement to dismiss a case on the payment of costs and
entry of a certificate of probable cause is in effect a comproraise
and should receive the consent of the three officers named in
the statute,^ but the unconditional dismissal of a suit under the
directions of the Commissioner is not such a compromise.*

A compromise implies some mutuality of concession, and
the power to compromise does not authorize a voluntary re-
linquishment of a tax lawfully assessed upon a solvent person.*
The power, consequently, should not be exercised except when
there is some doubt of the legality of the claim or of the ability
to collect.*

The power to compromise a suit under this statute ceases up-
on the entry of judgment.'

B U. S. Rev. Stat. § 3214. s ibid. p. 552.

6 U. S. Rev. Stat. § 3215. « Attorney General Devens, 16 Op.

§ 113. 1U. S.Rev. Stat. § 3229. Att. Gen. 247.

For an explanation of the relation B Attorney General Devens, 16 Op.

of these three officers to compromise, Att. Gen. 247, 248.

see Opinion of Attorney General Ash- 6 Attorney General Akerman, 13

ton, 12 Op. Att. Gen. 472. Op. Att. Gen. 479.

2 Attorney General Evarts, 12 Op.

Att. Gen. 536.

CHAPTER X.

REMEDIES OF TAXPAYEE.

§ 114. Enumeration of remedies of the taxpayer. The

remedies of a taxpayer against an illegal income tax may be taken before or after the collection of the tax. The remedies before the assessment of the tax are a hearing before the collector or deputy collector as to the contents of the return ; * on appeal to the collector from the deputy's decision ; * and an appeal to the Commissioner of Internal Revenue from the decision of the collector.* These remedies have been previously discussed. If the internal revenue .district in which the tax is assessed includes one of the territories or the District of Columbia, it is possible that the proceedings of some or all of these officers may be reviewed by the writ of certiorari, mandamus, or prohibition.* It is probable also that the proceedings of the Commissioner of Internal Revenue may be reviewed by one or more such writs.* He may perhaps also be personally liable in damages for an assessment upon income which is exempt from the tax.' The collection of the tax, if it or the warrant for its levy is void, may be resisted by force.' The remedies after the collection of the tax are appeals to the Commissioner of Internal Revenue,' suits against the United States.® suits against the Collector of Internal Revenue," and perhaps against the Commissioner of Internal Revenue."

§ 115. Injunctions. When the income tax was first imposed during the civil war, a number of applications were made for injunctions against its assessment or collection. To prevent this practice, Congress inserted a section in the Act of March 2d, 1867,* which has been incorporated in the Revised

§ 314. 1 Supra, § 88. 1 Tnfra, §]21.

2] bid. s Tnfra, § 122.

3 Ibid. »In*ra, § 128.

* Infra, § 116. 10 infra, § 124.

i Infra, §§ 117-119. infra, § 120.

e Cutting v. Gilbert, 5 Blatchf. §115. 1 1 4 Stat, at L. chap. 169,
259, 2 Int. Rev. Rec. 94, Fed. Cas. § 10. p. 475, U. S. Comp. Stat. 1901,
No. 3,519; infra, § 120. p. 2088.

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§ 115] INJUNCTIONS. 489

Statutes as follows: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." * Under this provision, it has been held that wherever a tax is imposed by a person in office having authority in the assessment of taxes for the United States, who acts under color of the statute, no injunction will be issued to restrain its collection, no matter how erroneous the assessment may be, and although the person against whom the assessment is made does not own the property taxed.' "It is sufficient that a statute has authorized the assessor to entertain the general subject of taxation; that it was in fact entertained, and a judgment, lawful or unlawful, was rendered concerning it." * It has been held that the unconstitutionality of the statute imposing the tax will not authorize the issue of an injunction.^ The Supreme Court of the District of Columbia has denied an application for an injunction against the enforcement of the Act of October 3, 1913.** It has been held that a mandatory injunction requiring a collector of internal revenue to accept an export bond for spirits in a bonded warehouse and to allow their withdrawal for export without payment of taxes, is in effect a bill to restrain the collection of internal revenue taxes and cannot be granted.* "The inhibition of section 3224 applies to all assessments of taxes made under color of their offices by internal revenue officers." "The remedy of a suit to recover back the tax after it is paid is provided by statute, and a suit to restrain its collection is forbidden. The remedy so given is exclusive, and no other remedy can be substituted for it. Such has been the current of decisions in the Circuit Courts of the United States, and we are satisfied it is a correct view of the law." ' This prohibition is constitutional, since the remedy by injunction is not a remedy at common law, and

« U. S. Rev. Stat. § 3224, U. S. collection of illegal tax, see note in Comp. Stat. 1901, p. 2088. 22 L.R.A. 699.

3 Kensett v. Stivers, 3 8 Blatchf . * Emmons, J., in Pullan v. Kin-
397, 10 Fed. 517; Pullan v. Kin- singer, 2 Abb. U. S. 94, 99, Fed. Caa.
singer, 2 Abb. U. S. 94, Fed. Cas. No. 11,463.

No. 11,463; Rowland v. Soule, 6 Rollins v. Freeland, 14: Int. 'Rq.\.

Deady, 413, Fed. Cas. No. 6,800; Rec. 28, Fed. Cas. No. 11,883; Shel-
Delaware B. Co. v. Prettyman, 17 ton v. Piatt, 139 U. S. 591, 598, 35 L.
Int. Rev. Rec. 99, Fed. Cas. No. ed. 273, 277, 11 Sup. Ct. Rep. 646.
3,767; Kissinger v. Baan, 7 Biss. 60, ^^ Dodge v. Osborn, S. C. D. C.
Fed. Cas. No. 7,853; Alkan v. Bean, May 14, 1914.
23 Int. Rev. Rec. 351, Fed. Cas. No. 8 Miles v. Johnion, 59 Fed. 38.
202; United States v. Black, 11 7 Mr. Justice Blatchfokd. in Sny-
Blatchf. 538, Fed. Cas. No. 14,600. der v. Marks, 109 U. S. 189, 193,
But see Fraysery. Russell, 3 Hughes, 27 L. ed. 901, 903, 3 Su^ . Ct. Rep.
227, Fed. Cas. No. 5,067. On general 159 ; citing Howland v. Soule, Deady,
question of injunction to restrain 413, Fed. Cas. No. 6,800; Pullan v.

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therefore the statute does not deny the citizen a right to legal process.' "The system prescribed by the United States in regard to both customs duties and internal revenue taxes, of stringent measures, not judicial, to collect them, with appeals to specified tribunals, and suits to recover back moneys illegally exacted, was a system of corrective justice intended to be complete, and enacted under the right belonging to the Government to prescribe the conditions on which it would subject itself to the judgment of the courts in the collection of its revenues. In the exercise of that right, it declares, by section 3224, that its officers shall not be enjoined from collecting a tax claimed to have been unjustly assessed, when those officers in the course of general jurisdiction over the subject-matter in question, have made the assignment and claim that it is valid." * The prohibition was held to apply so as to forbid an injunction against assessments made and warrants for collection issued prior to the enactment of the original statute.^" It has been suggested that an injunction might be granted to restrain an unlawful increase of an assessment when sufficient ground for equitable relief was shown.'^ An injunction by a state court against the assessment or collection of a Federal tax will be vacated after a removal of the case into a Federal court. *^ This statute does not apply so as to forbid an injunction by a Federal court against the collection or assessment of taxes by state or municipal authorities in a proper case for relief.*' Judge Hughes in the Circuit Court of the United States for the eastern district of Virginia granted an injunction against the as-

Kinsinger, 2 Abb. U. S. 94, Fed. Cas. der v. Marks, 109 U. S. 189, 194, 27

No. 11,463; *Bobbins v. Freeland*, 14 L. ed. 901, 903, 3 Sup. Ct. Rep. 159. Int. Rev. Eec. 28, Fed. Cas. No. 11,- 10 *Kensett v. Stivers*, 18 Blatchf.

883; *Delaware R. R. Co. v. Pretty-* 397, 10 Fed. 517. man, 17 Id. 99, Fed. Cas. No. 3,767 ; " *Magee v. Denton*, 5 Blatchf. 130,

United States v. Blade, 11 Blatchf. Fed. Cas. No. 8,943, A. D. 1863. 638, 543, Fed. Cas. No. 14,600; *Kis-* i^ *Kissinger v. Bean*, 7 Bias. 60,

singer v. Bean, 7 Biss. 60, Fed. Cas. Fed. Cas. No. 7,853. No. 7,853; *VnAted States v. Pacip,c l» Re Tyler*, 149 U. S. 164, 37 L.

RaUroad, 4 Dill. 66, 69, Fed. Cas. ed. 689, 13 Sup. Ct. Rep. 785; *State*

No. 15,983; *Alkan v. Bean*, 23 Int. Railroad Tax Cases, 92 U. S. 575,

Rev. Eec. 351, Fed. Cls. No. 202; 613, 23 L. ed. 669; *Schulenberg-*

Kensett v. Stivers, 18 Blatchf. 397, *Boeckeler Lumber Co. v. Toicn of*

10 Fed. 517. *Hayward*, 20 Fed. 422, 424. But see

8 *Pullan V. Kinsinger*, 2 Abb. U. S. *Wells v. Central Vermont R. Co.* 14 84, Fed. Cas. No. 11,463. Blatchf. 426, Fed. Cas. No. 17,390.

9 Mr. Justice Blatchford, in *Bny-*

i§ 116] APPLICATIONS FOR WRITS. 4:91

assessment of the tax against a citizen who had already paid all that -was due. That judge said: "His threatened levy was for what was not a tax, and it was threatened to be made in a manner which set at nought the provisions of section 3371. It was a clear case for the exercise of the restraining power of the <50urt; and was not a case falling within either the letter or spirit or intention of section 3224." ^*

The case which held that the Income Tax of 1894 was unconstitutional was brought by a stockholder to prevent his corporation from paying the tax. The government did not raise the ■objection of an adequate remedy at law and an injunction was consequently granted.^* But where it appeared that the suit was collusive, the Supreme Court dismissed a similar bill ; '* and in a later case, where that did not appear but the district attorney took the objection, the injunction was denied in a District Court."

§ 116. Applications for the writs of mandamus, certiorari and prohibition against collectors and deputy collectors of internal revenue. The District Courts of the United States have the power to grant writs of mandamus,^ certiorari,* or prohibition,' except as incidental to another case pending before them, and in certain special cases enumerated in different statutes, none of which relate to the review of or interference with the assessment or collection of taxes. No State Court has

the power to grant any of these writs against an officer of the

H. Froisher v. Russell, 3 Hughes, L. ed. 99; *Davenport v. County of*
.227, 330, Fed. Cas. No. 5,067. Dodge, 105 U. S. 237, 26 L. ed. 1018;

15 *Pollock v. Farmers' Loan & Louisiana v. Jumel*, 107 U. S. 711,
Trust Co. 157 U. S. 429, 554 (Har- 727, 27 L. ed. 448, 453, 2 Sup. Ct.
Ian and White, JJ. dissenting at p. Rep. 128. See Foster's Fed. Prac-
-653), 39 L. ed. 759, 809, 844, 15 Sup. tice, 5th ed. § 457.

Ct. Rep. 673. z U. S. R. S. § 716; V. 8. v.

16 *Corbus v. Alaska Treadwell Young*, 94 U. S. 258, 260, 24 L. ed.
Cold Min. Co. 187 U. S. 455, 47 L. 153; *Ex parte Tan Orden*, 3 Blatchf.
«d. 256, 23 Sup. Ct. Rep. 157. 166, Fed. Cas. No. 16,870; *In re*
iT *Straus v. Alrast Realty Co. (E. Martin*, 5 Blatchf. 303, Fed. Cas. No.
D. N. Y.) 200 Fed. 327. See Foster's 9,151; *Fowler v. Lindsey*, 3 Dall. 411,
Fed. Pr., Fifth ed., § 145. 1 L. ed. 658. See Foster's Federal
§ 116. i*McIntire v. Wood*, 7 Practice, 5th ed. § 460.

Cranch 504, 3 L. ed. 420; *M'Clung v. » Re Binimger*, 7 Blatchf. 159, Fed.
miliman, 6 Wheat. 598, 5 L. ed. 340 ; Cas. No. 1,417 ; U. S. Rev. Stat. §
•*Graham v. Norton*, 15 Wall. 427, 21 716, U. S. Comp. Stat. 1901, p.
h. ed. 177: *Bath County v. Amy*, 13 580. See Foster's Federal Practice,
Wall. 244, 20 L. ed. 539 ; *County of* 5th ed. § 456.
•*Greene v. Daniel*, 102 U. S. 187, 26

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United States.* The Supreme Court of the District of Col-
umbia has the power to issue these writs to officers of the United
States in cases within its territorial jurisdiction.* It may be
that the Supreme Courts of the Territories have the power to-
issue such writs to officers of the United States within their
respective Territories.® The Supreme Court of the District of
Columbia has no jurisdiction to grant such a writ to any officer-
of the United States beyond its territorial jurisdiction, which
is limited to the District of Columbia. Consequently, no court
can issue any of them to review the proceedings of a collector or
deputy collector of internal revenue except a Territorial Court.
and the Supreme Court of the District of Columbia against
officers residing within their respective territorial jurisdictions.
Inasmuch as the proceedings of the collector and deputy col-
lector in increasing returns can be reviewed upon appeal by the
Commissioner of Internal Revenue, it is doubtful whether any
court would interfere with their decisions. Consequently, the

court in which the application for the review of proceedings to assess a tax or penalty is likely to be made is the Supreme Court of the District of Columbia, upon the application for one of those writs against the Commissioner of Internal Revenue.

§ 117. Mandamus against the Commissioner of Internal Revenue. The Supreme Court of the District of Columbia has the same jurisdiction in law and equity that was possessed by the preceding courts of the State of Maryland, in 1801, prior to the cession of the district to the United States, so far as not modified by statute.* "The Supreme Court of the District of Columbia has the power to issue the writ of mandamus, in cases in which the relator is by common law entitled to seek relief, to an officer of the United States or other person within its territorial jurisdiction.* The writ will not issue in a case^ where its effect would be to direct or control the head of an ex-

ill'Clung v. Sauman, 6 Wheat. 8. v. Schurz, 102 U. S. 378, 393, 26

698, 5 L. ed. 340. L. ed. 187, 170; Foster's Fed. Pr. 5th

i Infra, § 117. ed. § 68.

6 dough V. Curtis, 134 U. S. 361, 29 St. at L. 253; United States v.

33 L. ed. 945, 10 Sup. Ct. Rep. 573. Schurz, 102 U. S. 378, 394, 26 L.

See Foster's Federal Practice, 5th ed. 167, 111; Kendall v. n. S. 12 Pet.

ed. S 457. 524, 9 L. ed. 1181; Decatur v. Pauld-

§ 117. 1 Act of February 27, 1877, ing, 14 Pet. 497, 10 L. ed. 559; Ken-

chap. 69, S 2118; 19 Stat, at L. 253; dall v. Stokes, 3 How. 87, 11 h. ed.

Price V. State, 8 Gill, 295, 310; V. 500; Commissioners of Patents v..

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ecutive department in the exercise of judgment or discretion, even when in the exercise of his discretion the officer has been called upon to interpret a statute of doubtful meaning, and has made an erroneous interpretation of the same ; * but when the ■officer refuses to act at all in a case where he is bound to act,* ■or when by special statute or otherwise a purely ministerial duty, which he is bound to perform without question, is imposed upon a public officer, even the head of an executive department, a mandamus may be issued to compel him to do such ■duty, if there is no other adequate remedy." ^ A peculiar rule, not usual in other jurisdictions, may be here observed : namely, that the court will not interfere to correct an erroneous interpretation, by the aid of the executive department, of a statute of doubtful meaning.* This limitation is not usual. Ordinarily, courts will grant a mandamus in case of such mistakes hj executive officers upon the ground that they are bound to

know the law, and that the courts will, consequently, interfere to compel them to observe it, even though they have acted in good faith.'" Whether or not this doctrine would be extended to prevent the issue of the mandamus against the Commissioner

Whiteley, 4 Wall. 522, 18 L. ed. 335; 8 Foster's Fed. Pr. (2d ed.) § 458; U. S. ex rel. Miller v. Black, 128 U. S. 40, 32 L. ed. 354, 9 Sup. Ct. Rep. 12; U. S. ex rel. Dunlap v. Black, 128 U. S. 40, 48, 50, 32 L. ed. 354, 358, 9 Sup. Ct. Rep. 12; O. 8. ex rel. Bedfield v. Windom, 137 U. S. 636, 34 L. ed. 811, 11 Sup. Ct. Rep. 12; States v. Schurz, 102 U. S. 378, 394, 811; U. S. ex rel. Boynton v. Blaine, 139 U. S. 306, 35 L. ed. 183, 11 Sup. Ct. Rep. 607; Butterworth v. Hoe, 112 U. S. 50, 28 L. ed. 656, 5 Sup. Ct. Rep. 25; Kendall v. U. S. ex rel. Redfield v. Windom, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; U. S. ex rel. Boynton v. Blaine, 139 U. S. 306, 319, 35 L. ed. 559; P. v. Blaine, 139 U. S. 306, 319, 35 L. ed. 559; U. S. ex rel. Redfield v. Windom, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; U. S. ex rel. Dunlap v. Black, 128 U. S. 40, 48, 32 L. ed. 354, 357, 9 Sup. Ct. Rep. 12; Decatur v. Paulding, 14 Pet. 497, 10 L. ed. 559; U. S. ex rel. Redfield v. Windom, 137 U. S. 636, 644, 34 L. ed. 811, 814, 11 Sup. Ct. Rep. 197; Foster's Fed. Pr. (5th ed.) § 457. Sup. Ct. Rep. 197; U. S. ex rel. T State ex rel. Carpenter v. Hastings, 10 Wis. 518; State ex rel. Poe v. Raine, 47 Ohio St. 447, 25 N. E. Rep. 607; U. S. v. Lamar, 116 U. S. 54; People ex rel. Otsego County

423, 29 L. ed. 677, 6 Sup. Ct. Rep. Bank v. Board of Supervisors, 51
424. N. Y. 401, 408.

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of Internal Revenue to compel him to allow a deduction from
the assessment of income exempt from the tax, or which the
taxpayer is entitled to have deducted, is unsettled. It has been
held by the courts of different States that where there is no stat-
utory review of the correction of errors in the assessment of a
tax, a mandamus will be granted for that purpose, provided
that the evidence is undisputed, so that the duty of the assessor
to allow the correction is clear.'

Under the Act of 1863, a District Judge said that the assess-
or might be compelled by mandamus to allow a statutory de-
duction.' In England, the writ has been issued to allow an
exemption,' and to compel the return of an overpayment.^^'

§ 118. Certiorari against Commissioner of Internal Rev-
enue. "The writ of certiorari is a writ issued from a supe-
rior to an inferior court, ordering the latter to certify to the
former certain proceedings before it.' At common law, the writ
was issued for two purposes : as an appellate proceeding for the
re-examination of some action of an inferior tribunal; and as

8 People ex rel. Genesee County 9 Magee v. Denton, 5 Blatchf 130,
Bank v. Olmsted, 45 Barb. 644, per Fed. Cas. No. 8,943, (N. D. N. Y.,
Daniels, J.; Gorver and Martin, 18G3) ; Hall, J.: "As the assessor
JJ., concurring; People ex rel. Lin- had no discretion, and would have
coin V. Barton, 44 Barb. 148, 29 been bound on the presentation of
How. Pr. 371 ; People ex rel. Nos- the oath, to strike out the addition
trand v. Wilson, 7 N. Y. Supp. 727; from the assessment, it is probable
State ex rel. Poe v. Ratne, 47 Ohio ^hat the plaintiff might have had a
St. 447, 25 N. E 54; Stote V. Gov- ^^^^^^ ^^ ,^^ j,^ mandamus."
mgton, 35 S. C. 245 14 b. i. 499; 10 Commissioners v. Pensel (A. D.
Smrth v. K^ng, li Or 10, 12 Pac ^^.^^.^^ 2
8; Spellmg on Extraordinary Reliei, _ ' t't- • a ->
< 1534. See, however, as to the view ,," „ . . ^ c,,
that certiorari and not Tmandamus is . " Q<<^e« v. Comm^ss^oners for 8pe-

the proper remedy to review the de- f^l Purposes of the Income T<^
cision of the assessor or board of {Copper Mvmng Company^s Gase) 21
assessors, People ex rel. Osborn v. Q- B. D. 313, 317; Robinson's In-
Gilon, 9 N. Y. Supp. 212; Spelling come Tax, 2d ed. 342.
on Extraordinary Relief, § 1967. § 118. 1 Foster's Fed. Pr. 5th ed.

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an auxiliary process to enable the court to obtain further in-
formation in respect to some matter already before it for adjudi-
cation." * The Supreme Court of the District of Columbia has
the power to grant a writ of certiorari in order to re-examine
the decision of an inferior tribunal within that district and de-
termine whether its proceedings have been irregular or without
jurisdiction.' "A writ of certiorari, when its object is not to
remove a case before trial, or to supply defects in a record, but
to bring up, after judgment, the proceedings of an inferior court
or tribunal whose procedure is not according to the course of
the common law, is in the nature of a writ of error. Although
the granting of the writ of certiorari rests in the discretion of
the court, yet after the writ has been granted and the record
certified in obedience to it, the questions arising upon that rec-
ord must be determined according to fixed rules of law, and
their determination is reviewable on error." * Of late years
there has been a strong tendency on the part of the courts to
extend this remedy in order to review proceedings of adminis-
trative officers which are of a quasi-judicial nature, when there
is no other adequate remedy.* The Supreme Court of the Dis-
trict of Columbia even after a sale for taxes may review by cer-
tiorari and quash the proceedings of the District Board of
Equalization in assessing a tax upon exempt property.® The

§ 460; citing United States v. 32 L. ed. 697, 9 Sup. Ct. Eep.

Young, 94 U. S. 258, 259, 24 L. ed. 314.

]o3. See Harris v. Barber, 129 U. 4 Mr. Justice Geat, in Harris v.

S. 366, 369, 32 L. ed. 697, 699, 9 Barber, 129 U. S. 366, 369, 32 L. ed.

Sup. Ct. Rep. 314. 697, 699, 9 Sup. Ct. Rep. 314.

8 Foster's Federal Practice, 5th ed. 6 Alexandria C. li. d S. II. Co. v.

§ 460; citing United States v. District of Columbia, 5 MacIcney, 376.

Young, 94 U. S. 258, 259, 24 L. ed. 6 state v. City of Elizabeth, 50 N.

153. J. L. 347, 13 Atl. 5; Remy v. As-

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same court has issued the writ against the Treasurer of the United States and the commissioners of the district to set aside an invalid assessment of district taxes.' Where the district tax was assessed on different kinds of property as a unit and part of the property was not subject to taxation; the whole assessment was set aside when the court could not from the record separate the illegal tax on the exempt, from that on the taxable, property.* If these rulings are followed, there seems to be no reason in principle why the same relief should not be extended to review the proceedings of the Commissioner of Internal Revenue on the correction of the collector's list or the assessment of the income tax. That the act of assessment is judicial in its nature cannot well be questioned.' Where an assessor of taxes acts beyond his jurisdiction by assessing taxes upon persons or property who are exempt, it is a frequent practice- for the courts to review his proceedings and quash the assessment by the writ of certiorari.'* The rule is thus laid down by Mr. Spelling in his excellent book on Extraordinary Relief: "To authorize certiorari to review and quash the proceedings of tribunals charged with duties pertaining to taxation, there must be some irregularity fatally affecting their legality. It does not lie on account of mistake or

N. W. 899; Spelling on Extraordi- 376, 384; citing Santa Clara Co. v. nary Relief, § 1967. Southern Pac. B. R. Co. 118 U. S.

7 Wood V. District of Columbia, 6 394, 30 L. ed. 118, 6 Sup. Ct. Rep. Mackey, 142; citing Ewing v. St. 1133.

Louis, 5 Wall. 413, 18 L ed. 657 ; 9 jyelaioare R. Co. v. Prettyman, 17

Gaither v. Watlans, 66 Md. 577, 8 j, ^^^ -^^^ "" tj, "", S, "" ^ 't.t,,

Atl. 464. See s^lso Padgett v. Dis- ^°V n /, % ' n p,, ^ ^ ?^a

trict of Columbia, 17 App. D. C. 5; !^' j. ^°" ' ' / " ? * ! " ^ ^ * ! ^ - ^ ^ !

255; G'uy v. District of Columbia, ^ ^ d. Cas. No. 3,969. 25 App. D. C. 117. ^* State ex rel. Benedictine Sisters

8 Alexandria C. R. & B. R. Co. v. City of Elizabeth, 50 N. J. L. 347, V. District of Cohmibia, 5 Mackey, 13 Atl. 5; Remy v. Board of Equal-

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mere error of judgment. Nor can an error in the amount of an assessment or tax levied by the proper authority, when there is no error in the principle of apportionment, be corrected by

certiorari, otherwise if the assessment be made on erroneous principles." ^^

A recent New York case holds that certiorari and not mandamus is the proper remedy to set aside an assessment against a person over whom the assessing body had no jurisdiction.*^ That was an application for a mandamus to compel the board of assessors to strike from the assessment list the name of the relator and substitute that of the real owner of the property affected. Mr. Justice Lawrence said, at special term : "Conceding all that the relator states in his moving papers to be established, this is not a proper case, in my opinion, for granting the mandamus which is asked for. The court will not by mandamus direct a quasi-judicial tribunal what to do. It can only set the board of assessors in motion where it has refused to act. (People v. Common Council, 78 IST. Y. 37, and cases cited by Eapai-lo, J.) Here the board of assessors has acted, and has rendered its judgment upon the question referred to in the relator's affidavits. If the decision of the board of assessors was wrong, mandamus is not the proper remedy for obtaining a review of its decision. Such a review may be obtained on the writ of certiorari." *^ The writ of certiorari has been granted, in Tennessee, to set aside a distress warrant illegally issued for the collection of taxes, and a penalty illegally imposed.*' No attempt to obtain the writ against the Commissioner of Internal Revenue appears to have been made.

In a recent case, it was held by the Supreme Court of the United States that this writ would not issue to review the decision of the Postmaster-General forbidding the delivery of

ization of City of Burlington, 80 9 N. Y. Supp. 212, 213. The Gen-Iowa, 470, 45 N. W. 899 ; Spelling on eral Term, speaking through Judge Extraordinary Relief, § 1967. Brady, affirmed the case upon this 10 Spelling on Extraordinary Re- opinion. See, however, the cases lief, § 1967, citing Leroy v. Mayor, cited in § 117, notes 8-11, supra,

20 Johns. 430, 11 Am. Dec. 289
BaldvAn v. Galkvns, 10 Wend. 167
Bouton V. Brooklyn, 2 Wend. 395

which allowed the writ of mandamus in similar cases.

12 Ihid.

Giibs V. Hampten, 19 Pick. 298. 13 Spears v. Loague, 6 Coldw. 421.

11 1'people ex rel. Oshorn v. Oilon,
Foster Income Tax. - 32

mail to the relator.^* There, however, the relator had a right to apply for an injunction "had there been an arbitrary exercise of statutory power or a ruling; in excess of the jurisdiction conferred." ** As has been already shown, no injunction will be issued against the collection of a tax imposed under the Internal Revenue Laws.'° In the case just cited, the court said further: "Besides, if the common law writ, with all of its incidents, could be construed to apply to administrative and quasi-judicial rulings it could, with a greater show of authority, issue to remove a record before decision and so prevent a ruling in any case where it was claimed there was no jurisdiction to act. This would overturn the principle that, as long as the proceedings are in fieri the courts will not interfere with the hearing and disposition of matters before the Departments. *Plested v. Abbey*, 228 U. S. 42, 51, 57 L. ed. 724, 33 Sup. Ct. Rep. 503. To hold that the writ could issue either before or after an administrative ruling would make the dispatch of business in the Departments wait on the decisions of the courts and not only lead to consequences of the most manifest inconvenience, but would be an invasion of the Executive by the Judicial branch of the Government. The writ of certiorari is one of the extraordinary remedies and being such it is impossible to anticipate what exceptional facts may arise to call for its use, but the present case is not of that character, but rather an instance of an attempt to use the writ for the purpose of reviewing an administrative order. *Public Clearing Houses v. Coyne*, 194 U. S. 497, 48 L. ed. 1092, 24 Sup. Ct. Rep. 789. This cannot be done." "

§ 119. Writs of prohibition against Commissioner of Internal Revenue. The writ of prohibition is a writ issuing out of a court of superior jurisdiction, and directed to an inferior court for the purpose of preventing the inferior tribunal from usurping a jurisdiction to which it is not entitled.^ In later times, the use of this writ has been extended so as to review the quasi-judicial proceedings of administrative officers and

liDegge v. Bitchcoch, 229 U. S. ^^ *Degge v. mtchoocJc*, 229 U. S.

162, 57 L. ed. — , 33 Sup. Ct. Rep.]62, 172, 57 L. ed. — , 33 Sup. Ct.

639. Rep. 639.

15 Ibid. 229 U. S. 162, 171, 57 L. § 119. 1 High on Extraordinary ed. — , 33 Pup. Ct. Eep. 639. Remedies, S 762; Foster's Fed. Pr.

16 Supra, § 115. 5th ed. § 456.

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courts, such as railroad commissioners, county commissioners, and commissioners of roads, and to prevent them from exceeding their jurisdiction.^ "Commissioners and other bodies are often vested with judicial powers in the performance of their duties, and carrying out the objects of their creation ; and where

such quasi-judicial bodies exceed their judicial powers, prohibition will lie against them." ' It seems that the Supreme Court of the District of Columbia has the power to issue writs of prohibition directed to inferior courts within its territorial jurisdiction.* The writer has found no case in which the writ of prohibition has been granted by the Supreme Court of the district against an officer of the United States; but there seems to be no reason why that court should not follow the modern practice of State courts in that respect.

In Great Britain the writ will not issue against an officer whose acts can be reviewed by an administrative board.* It has been held in California that the writ of prohibition will not issue against a tax collector who has received process for execution to restrain him from performing the duties of his office ; ® nor against a tax assessor to prevent his sale of property for a tax imposed upon other property not owned by the person against whom the tax was assessed, ' upon the ground that the acts thus sought to be restrained were ministerial and not judicial. There would seem to be little doubt of the judicial nature of the assessment of the income tax by the Commissioner of Internal Revenue.*

It may be that the constitutionality of the act can be tested; by an application for this writ against the Commissioner of Internal Revenue.

§ 120. Action against Commissioner of Internal Revenue. There is a dictum by Mr. Justice Nelson in a case under the former tax on bankers and brokers,* that the assessor is.

2 Chandler v. Massachusetts R. R. 5 Heo) v. General Commissioners of Commr's, 141 Mass. 208, 5 N. E. Taxes for Clerkenwell [1901] 2: IC 609; Connecticut River R. R. Co. v. B. 879, Itobinson, Income Tax, 2d; Franklin County Commr's, 127 Mass. ed. 342.

.10 ; State V. Commissioners, 1 Mill, 6 Hobart v. Tillson, 66 Cal. 210, S. C. 55, 12 Am. Dec. 607. 5 Pac. 83; Le Gonte v. Beverly, 57

3 Spelling on Extraordinary Re- Cal. 267.

lief,' § 1 744. '^ farmers' Co-operative Union v.

4 See the argument of Messrs. Jeff Thresher, 62 Cal. 407.

Chandler and Heppa Houston, in 8 Delauxire R. Co. v. Prettyiman,

Smith V. Whitney, 116 U. S. 167, 17 Int. Rev. Rec. 99, Fed. Caa. No.

173, 29 L. ed. 601, 602, 6 Sup. Ct. 3,767; Doll v. Evans, 9 Phila. 364,

Rep. 570; V. S. v. Schurz, 102 U. S. Fed. Cas. No. 3,969.

378, 26 L. ed. 167; Price v. State. 8 § 120. 1 Act of June 30; 1864. 13:

Gill, 29.5, 310; Act of February 27. Stat, at L. 223, chap. 173, as amended-1877, chap. 69, section 2 (19 Stat.

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personally liable in case of an assessment in property exempt from the tax.* "I regard the liability of the assessor as settled, in a case of illegal assessment, by which I mean an assessment on property or business not liable to the tax. This is a naked trespass, where the property or business is disturbed by pre-tense of the authority. Even a court of special and limited jurisdiction is liable, in cases where its powers are carried beyond its jurisdiction." ' Since then the office of assessor has been abolished and his duties transferred to the Commissioner of Internal Revenue.*

§ 121. Resistance to levy. Where the tax is void and not voidable and the distress warrant shows that upon its face, the taxpayer may resist the levy by force. The serious consequences, however, of resistance to a Federal officer, which may be criminal if the taxpayers view of the law is not sustained by the courts,^ make it advisable to either allow the collector to collect the tax by distress, without resistance, and then to sue him for trespass or conversion, or to pay the tax under protest and then sue for its recovery.

§ 122. Appeals to the commissioner for a return of taxes.

The Revised Statutes provide that:

"The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit ; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought

cd by Act of March 3, 1865, 13 Stat. 4 U. S. Eev. Stat. § 3182, U. S. at L. 469, chap. 78. Comp. Stat. 1901, p. 2071; supra, §

2 Cutting v. Gilbert, 5 Blatchf. 89.

259, 2 Int. Eev. Kec. 94, Fed. Cas. §]21. 1 See U. S. Eev. Stat. § No. 3,519. 5946.

8 Cutting v. Gilbert, 5 Blatchf.

259, 2 Int. Eev. Eec. 94, Fed. Ca3. jTt). 3,519.

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against him by reason of anything done in the due performance of his official duty: Provided, That -where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is provided that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation." *

"JSTo suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of [the'\ Internal Eevenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein : Provided, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited within the next section." *

"No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected, without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: Provided, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section." '

§ 122. 1 u. S. Rev. Stat. § 3220. 3 u. S. Rev. Stat. § 3227.

2 v. S. Rev. Stat. § 3226.

S02 EEMEDIES OF TAXPAYER. [§ 122

"All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty Alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Eevenue within two years next after the cause of action accrued: Provided, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the commissioner at any time with-

in one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date." *

Whether the appeal provided for in the foregoing sections is at the present time necessary under all circumstances may possibly be open to question.** If the taxpayer has actually resisted the original assessment by proceedings before the commissioner, it might seem to be a useless proceeding to raise the same issues again before the same officer after payment, and there are judicial intimations to the same effect.* It is probably the safer practice for the taxpayer, even though he has taken and opposed an appeal before the Commissioner of Internal Revenue from the first assessment of the tax, to make a subsequent appeal for a remission of the same after its payment.* Where the first assessment has been set aside and a second assessment made, a new appeal should be taken to the commissioner if it is desired to contest the second assessment.' When suit is brought by the taxpayer against the collector or deputy collector for the recovery of the tax, the burden of proof is upon him to show that his appeal has been taken and decided, or else that decision was delayed more than six months from the date of the appeal.' the written appeal, or a certified copy thereof, must, therefore, be produced

4 U. S. Rev. Stat. § 3228. refund any tax assessed or collected

*a The bill of complaint in John by an officer which is wholly outside F. Dodge and Horace E. Dodge of his official duties and his jurisdiction against William H. Osborn, filed in dictation and authority, such as a tax the Supreme Court of the District forbidden by the Constitution of the of Columbia, and there dismissed, United States."

contends that these statutory provisions do not apply to the Act of 3 Hughes, 239, 243, Fed. Cas. No. 35,846. See also San Francisco assessment is now made in the first instance by the Commissioner of Internal Revenue, without any statutory requirement of previous notice to the taxpayer, and not as under Wall. 38, 22 L. ed. 779; but see the Act of July 1st, 1862, by an assessor in each collection district, S. 579, 29 L. ed. 491, 6 Sup. Ct. who was required to give previous

B Judge Hughes in V. 8. v. Myers,
October 3rd, 3913, because the as-
San Francisco Sav-
Union v. Gary, 17 Int. Rev. Rec.
No. 12,317, affirmed
Gary v. San
Francisco Savings, etc. Society, 22
L. ed. 779; but see
Murphy, 115 U.
491, 6 Sup. Ct.
185.

public notice of the time and place e u. S. Rev. Stat. § 3226 (U. S. when he would consider appeals Corap. Stat. 1901, p. 2088) ; Arnson from the proceedings of the assist- v. Murphy, 115 U. S. 579, 585, 29 ant assessor, who made the prelimi- L. ed. 491, 493, 6 Sup. Ct. Rep. 185. nary assessment ; nor as under the ' ' Gheatham v. U. 8. 92 U. S. 85, Act of June 30th, 1864, which gave 23 L. ed. 561. further appeal in such cases to the 8 U. S. Rev. Stat. § 3226 (U. S. Commissioner of Internal Revenue. Comp. Stat. 1901, p. 2088) ; Lauer This bill further contends that the v. U. 8. 5 Ct. CI. 447; Hubbard v. statutes vest no power in the Com- Kelley, 8 W. Va. 46. missioner of Internal Revenue "to

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and put in evidence or its loss accounted for, since that is the best evidence of the appeal.* A letter of the commissioner is not sufficient evidence of the decision of the appeal ; proof must be given by the production of the official records, or duly authenticated copies of the same.^" A certificate endorsed on the appeal "examined and rejected," signed by some one unknown to the court, without evidence to show that the commissioner adopted it as his decision, is not competent proof of the decision.^'

"An informal appeal to the commissioner, which is satis^ factory to him and is accepted as such, is a sufficient presentation of a claim to lay the foundation of a more formal application to be made in conformity to the regulations, when required by the commissioner, as was done in the present case." *^ "At the time of the payment of this tax the claimant entered a protest against its legality. A protest has never been held by the Commissioner of Internal Revenue to be necessary as a condition precedent to the right of a claimant to appeal to him and to obtain a refund of taxes illegally assessed and collected. If this protest was in writing and was forwarded to the commissioner, he may have found from its language that it was made as, and was sufficient for a primary application or presentation of a claim for a refund." ^'

The appeal may be lodged with the appropriate collector. Such a practice is advantageous both to the taxpayer and the commissioner's office.* In the prosecution of his appeal the taxpayer is not to be prejudiced by mistakes or errors in the commissioner's office. They are not within his control.*

The action of the commissioner upon an application for the return of a tax is his own independent action, and is not con-

trolled by the necessity of sending the papers to the Secretary
9 Huhbard v. Kelley, 8 W. Va. 46. " fj. 8. v. Savings Bank, 104 U. S.
10Huhhard v. Kelley, 8 W. Va. 46. 728, affirming s. c. 16 Ct. CI. 335;
11Lauer v. V. 8. 5 Ct. CI. 447. V. 8. v. Harmon, U7 U. S. 268, 37
1*Z. €,., to permit of amendment L. ed. 164, 13 Sup. Ct. Rep. 327;
and at the same time to save all but see contra. Cotton Press Go. v.
rights as to statutory period (14 Op. Collector, 1 Woods, 296, Fed. Cas.
Att. Gen. 615). Richaedson, C. J., No. 3,271.
First Nat. BairJc of Greencastle v. IS Dunnegan v. U. 8. 17 Ct. CI.
U. 8. 15 Ct. CI. 225, 229. 247, 259: Woolner v. V. 8. 13 Ct.
18 Richaedson, C. J., in First Nat. CI. 365.
Bank of Greencastle v. V. 8. 15 Ct.
CI. 225, at p. 229.

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of the Treasury for his "consideration and advisement." ^*
When, however, the commissioner had certified that a claim had
been examined and allowed and thereupon transmitted it to the
secretary for such consideration and advisement and the secre-
tary had disapproved it, it was held that there had as yet been
no such final allowance as would confer rights against the Go^--
ernment.^ ^

The appeal under discussion is an appeal after payment of
the tax, and would seem to be in the nature of a request for a
repayment. The decision of the commissioner thereon de-
termines the form of the taxpayer's subsequent proceedings.
"Until an appeal is taken to the commissioner no suit what-
ever can be maintained to recover back taxes illegally assessed
or erroneously paid. If on the appeal the claim is rejected,
an action lies against the collector (Rev. Stat. sec. 3226 [U. S.
Comp. Stat. 1901, p. 2088]), and through him, on establish-
ing the error or illegality, a recovery can be had. If the claim
is allowed, and payment for any cause refused, suit may be
brought directly against the Government in the Court of
Claims. * * * A. rejected claim may be prosecuted against
the collector, and an allowed claim, not paid, may be sued for
in the Court of Claims. To say the least the decision of the
commissioner on the appeal is sufficient to determine whether
one form of remedy shall be resorted to by the claimant, or the
other." "

If the commissioner decides the appeal in favor of the tax-
payer, he certifies the result to the taxpayer in a form of which

the following is an illustration : ^^

"[Form No. 680.]

"Schedule of claims for the refunding of taxes erroneously assessed and paid, which have been examined and allowed.
District. Claimants. Amount.

1st La. J. O. Nixon, \$1,092 55

Total, \$1,092 55

16 Sybrandt v. V. S. 19 Ct. CI. 1. v. Savings Bank, 104 U. S. 728, at p.

y> Duvasseur v. U. S. 19 Ct. CI. 1; 734, 26 L. ed. 908, 909.

Slotesbury v. V. S. 146 U. S. 196, 19 Taken from Niseon v. United

36 L. ed. 940, 13 Sup. Ct. Rep. 1. States, 18 Ct. CI. 448, at p. 451.

18 Waite, C. J., in United States

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50^

"I hereby certify that the foregoing claims for the refunding of taxes erroneously assessed and paid have been examined and allowed.

"H. C. EOGES,

"Acting Commissioner.

"Office Internal Eventje^ Aug. 28th. 1879.

"Commis. of Int. Rev. in account with United States, Cr,
"By this amount for the refunding of taxes erroneously assessed and collected as per schedule No. 680.

One claim, January, '76 \$1,092.55

Judgment, etc \$880.00

Interest 189.20

1,069.20

Costs 23.35

Total \$1,092.55"

This certificate is to be presented through the accounting officers to the Treasury Department, because the commissioner is not a disbursing officer, and the Treasury Department may then pay the claim. The Department, however, may refuse to pay, and the taxpayer must take steps to compel payment.

It is now settled that the Court of Claims has jurisdiction to entertain a suit on an allowance like the foregoing. The allowance is in the nature of an account stated, and conclusive in his favor against the Government. Whether the allowance can be impeached is a question that seems not decided ; but there is a dictum that it may, on the equitable grounds of fraud and mistake and that the burden of proof would in such case rest upon the Government. If made without jurisdiction it is void. When the amount of the claim does not exceed ten

zo United States v. Savings Bank, 22 United States v. KoMpman, 96 104 U. S. 728, 26 L. ed. 908. U. S. 567, 24 L. ed. 792.

21 United States v. Kaufman, 96 23 First National Bank of Oreen- U. S. 567, 24 L. ed. 792; United castle v. United States, 15 Ct. CI. States V. Barnett, 154 U. S. 676, 26 225, 231.

L. ed. 909, and 14 Sup. Ct. Eep. i Seat, Admvr. v. United States, 1211 ; Wiicon v. United States, 18 Ct. 18 Ct. CI. 458. CI. 448.

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thousand dollars, the District Courts of the United States have jurisdiction to entertain suit. Such suits in the District Courts must be brought in the district of the plaintiff's residence.

It was held in one case that the commissioner might revoke his allowance at any time before payments, but it is difficult to reconcile that decision with the cases holding that the allowance gives an immediate right of action against the Government.

If, however, the commissioner decides the appeal against the taxpayer, the situation is quite different from that heretofore considered. A refusal to allow the claim is not subject to review in the Court of Claims, but the taxpayer must establish his claim by suit. Section 3226 of the Revised Statutes authorizes (by implication) a suit against the collector, the conditions and incidents of which are fully considered elsewhere."

If suit is brought it is unquestionably the better practice to notify the Treasury officials, although it has been held unnecessary so to do.''

After a final judgment in favor of the taxpayer, when a writ of error has been taken he should again present his claim so established to the commissioner. Even then, it is said in one case, that the judgment is not conclusive against the Government, because by virtue of the provisions of § 3220 of the Revised Statutes the commissioner may review any judgment against a collector.* The first decision of the commissioner disallowing the claim does not prevent him from subsequently allowing a payment on a judgment against the collector."

§ 123. Jurisdiction of suits by taxpayers after payment or collection. A suit against a collector or deputy collector to collect a tax paid under protest, or for trespass on account of the

Z6Ind. Code § 24; 36 Stat, at L. 1211; Nixon v. United States, 18 Ct.

1087, chap. 231, U. S. Comp. Stat. CI. 448.

■ Supp. 1911, p. 128; Foster's Fed. Pr. as Boehm v. Vmited States, 21 Ct.

6th ed. 596. CI. 290.

26 /bid. ^0 Infra, § 106.

27 Ridgway v. United States, 18 31 Nixon v. United States, 18 Ct. Ct. CI. 707. CI. 448; Dunnegan \. United States,

28 United States v. EoAifman, 96 17 Ct. CI. 247.

U. S. 567, 24 L. ed. 792; United 32 Dunnegam v. United States, 17

States V. Barnett, 154 U. S. 676, 24 Ct. CI. 247.

L. ed. 909, and 14 Sup. Ct. Rep. 33 Nixon v. U. S. 18 Ct. CI. 448.

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illegal collection of the tax, arises under the Constitution and laws of the United States.^ It may be maintained in a District Court of the United States no matter how small is the amount involved.^ Unless a constitutional question is raised, it may be reviewed on writ of error by the Circuit Court of Appeals.^ If a constitutional question is raised, the whole case may be reviewed by the Supreme Court of the United States.* Such suits may also be brought in the State Courts.* The judgment of the State Court in such a case may be reviewed by the Supreme Court of the United States on writ of error by the defendant.® Such an action, when brought in a State Court, may also be removed into the District Court of the United States by the defendant under the Judicial Code, which provides:

"When any civil suit or criminal prosecution is commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time be-

§ 123. *Ames v. Eager*, 1 L.R.A. Rep. 572; *Louisville Public Ware-*
377, 13 Sawy. 473, 36 Fed. 129. See *house Co. v. Golleotor*, 1 C. C. A. 371,
also *V. 8. V. Mooney*, 116 U. S. 104, 6 U. S. App. 53, 49 Fed. 561. See
107, 29 L. ed. 550, 551, 6 Sup. Ct. *Foster's Federal Practice*, 5th ed.
Rep. 304. See *Foster's Federal Prac-* § 691.
tice, 5th ed. §§ 24, 34. 4 Ind. Code § 238; 36 Stat, at L.
ZAmes V. Hager, 1 L.R.A. 377, 36 1087, chap. 231, U. S. Comp. Stat.
Fed. 129. See also *V. 8. v. Mooney*, Supp. 1911, p. 128, *Foster's Fed. Pr.*
116 U. S. 104, 107, 29 L. ed. 550, 5th ed. § 688.
551, 6 Sup. Ct. Rep. 304. See *Fos- . B Collector v. Hulhwrd*, 12 Wall,
ter's Federal Practice, 5th ed. §§ 5, 1, 20 L. ed. 272; *Hubbard v. Kelley*,
34. 8 W. Va. 46; *Assessor v. Osborn*, 5
3 *Hubbard v. 8oby*, 146 U. S. 56, Wall. 567, 572, 19 L. ed. 748, 750.
36 L. ed. 886, 13 Sup. Ct. Rep. 13 ; e *Collector v. Hubbard*, 12 Wall. 1,
V. 8. V. Hopewell, 2 C. C. A. 510, 5 20 L. ed. 272. See, for the practice
U. S. App. 137, 51 Fed. 798, 799; on such a writ of error, *Foster's*
Passavant v. United States, 148 U. Federal Practice (5th ed.), chapter
S. 214, 37 L. ed. 427, 13 Sup. Ct. XXXVI.

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fore the trial or final hearing thereof, be removed for trial into-
the district court next to be holden in the district where the

same is pending, upon the petition of such defendant to said district court, and in the following manner : Said petition shall set forth the nature of the suit or prosecution, and be verified by affidavit; and, together with a certificate signed by an attorney or counselor-at-law of some court of record of the state where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State Court, When the suit is commenced in the State Court by summons, subpoena, petition, or any process except *capias* the clerk of the district court shall issue a writ of certiorari to the State Court, requiring it to send to the District Court the record and proceeding in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State Court, or left at his office, by the marshal of the district, or his deputy, or by some person duly authorized thereto ; and thereupon it shall be the duty of the State Court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State Court shall be void. And if the defendant in the suit or prosecution be in actual custody or mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to the law and the order of the district court, or, in vacation, of any judge thereof ; and

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if, upon the removal of such suit or prosecution it is made to appear to the District Court that no copy of the record and proceedings therein in the State Court can be obtained, the district court may allow and require the plaintiff to proceed de novo, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non prosecution shall be rendered against him, with costs for the defendant." "

The statute of which this is a substantial re-enactment was held to be constitutional ; * even when under it an indictment of a deputy collector of internal revenue for murder under color of his office was thus removed from a State Court

to a Federal Court, a reason for sustaining the act was thus stated by Mr. Justice Strong:

"We come then to the inquiry, most discussed during the argument, whether section 643 is a constitutional exercise of the power vested in Congress. Has the Constitution conferred upon Congress the power to authorize the removal, from a State Court to a Federal Court, of an indictment against a revenue officer for an alleged crime against the state, and to order its removal before trial, when it appears that a Federal question or a claim to a Federal right is raised in the case, and must be decided therein? A more important question can hardly be imagined. Upon its answer may depend the possibility of the General Government's preserving its own existence. As was said in *Martin v. Hunter*, 1 Wheat. 363, 4 L. ed. 111, 'The General Government must cease to exist whenever it loses the power of protecting itself in the exercise of its constitutional powers.' It can act only through its officers and agents, and they must act within the states. If, when thus acting, and within the scope of their authority, those officers can be arrested, and brought to trial in a State Court, for an alleged offense against the law of the state, yet warranted by the Federal authority they possess, and if the General Government

T 36 Stat, at L. 1087, chap. 231, U. « *Tennessee v. Davis*, 100 U. S. «. Comp. Stat. Supp. 1911. p. 128. 257, 25 L. ed. 648.
^Foster's Fed. Pr. 5th ed. § 551.

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is powerless to interfere at once for their protection; if their protection must be left to the action of the State Court; the operations of the General Government may at any time be arrested at the will of one of its members. The legislation of a state may be unfriendly. It may add penalties to acts done under the immediate direction of the National Government, and in obedience to its laws. It may deny the authority conferred by those laws. The State Court may administer not only the laws of the state, but equally Federal law, in such a manner as to paralyze the operations of the Government. And even if, after trial and final judgment in the State Court, the case can be brought into the United States Court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested.

"We do not think such an element of weakness is to be found in the Constitution. The United States is a Government with authority extending over the whole territory of the Union, acting upon the states and upon the people of the states. While it is limited in the number of its powers, so far as its sovereignty extends, it is supreme. No State Government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject

which that instrument has committed to it.

"By the last clause of the 8th section of the 1st article of the Constitution, Congress is invested with power to make all laws necessary and proper for carrying into execution, not only all the powers previously specified, but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. Among these is the judicial power of the Government. That is declared by the 2d section of the 3d article to 'Extend to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or which shall be made under their authority, etc' This provision embraces alike civil and criminal cases arising under the Constitution and laws. *Cohen v. Virginia*, 6 Wheat. 399, 5 L. ed. 290. Both are equally within the domain of the judicial powers of the United States, and there is nothing in the grant to justify an assertioni

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that whatever power may be exerted over a civil case may not be exerted as fully over a criminal one. And a case arising under the Constitution and laws of the United States may as well arise in a criminal prosecution as in a civil suit. What constitutes a case thus arising was early defined in the case cited from 6 Wheaton. It is not merely one where a party comes into court to demand something conferred upon him by the Constitution or by a law or treaty. A case consists of the right of one party as well as the other, and may truly be said to arise under the Constitution or a law or a treaty of the United States whenever its correct decision depends upon the construction of either. Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted. Story, *Const*, sec. 1647 ; *Cohen v. Virginia*, 6 Wheat. 379, 5 L. ed. 285. It was said in *Osborn v. Bk.* 9 Wheat. 823, 6 L. ed. 224 : 'When a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved in it.' And a case arises under the laws of the United States, when it arises out of the implication of the law. Chief Justice Marshall said, in the case last cited : 'It is not unusual for a legislative act to involve consequences which are not expressed. An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of Congress to imply, without expressing, this very exemption from state control.' * * * 'The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while

in the line of their duty; and yet this protection is not expressed in any act of Congress. It is incidental to and is implied in the several acts by which those institutions are created; and is secured to the individuals employed in them by the judicial power alone; that is, the judicial power is the

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instrument employed by the Government in administering this security.'

"The constitutional right of Congress to authorize the removal before trial of civil cases arising under the laws of the United States has long since passed beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution, and the power has been in constant use ever since. The Judiciary Act of September 24, 1789, was passed by the first Congress, many members of which had assisted in framing the Constitution; and though some doubts were soon after suggested whether cases could be removed from State Courts before trial, those doubts soon disappeared. Whether removal from a State to a Federal Court is an exercise of appellate jurisdiction, as laid down in Story's Commentaries on the Constitution, section 1745, or an indirect mode of exercising original jurisdiction, as intimated in *E. Co. v. Whiton*, 13 Wall. 270, 20 L. ed. 571, we need not now inquire. Be it one or the other, it was ruled in the case last cited to be constitutional. But if there is power in Congress to direct a removal before trial of a civil case arising under the Constitution or laws of the United States, and direct its removal because such a case has arisen, it is impossible to see why the same power may not order the removal of a criminal prosecution, when a similar case has arisen in it. The judicial power is declared to extend to all cases of the character described, making no distinction between civil and criminal, and the reasons for conferring upon the courts of the National Government superior jurisdiction over cases involving authority and rights under the laws of the United States, are equally applicable to both. As we have already said, such a jurisdiction is necessary for the preservation of the acknowledged powers of the Government. It is essential, also, to an uniform and consistent administration of national laws. It is required for the preservation of that supremacy which the Constitution gives to the General Government by declaring that the Constitution and laws of the United States made in pursuance thereof, and the treaties made or which shall be made under the authority of the United States, shall be the supreme laws of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

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The founders of the Constitution could never have intended

to leave to the possibly varying decisions of the State Courts v^hat the laws of the Government it established are, what rights they confer, and what protection shall be extended to those who execute them. If they did, where is the supremacy over those questions vested in the Government by the Constitution? If, whenever and wherever a case arises under the Constitution and laws or treaties of the United States, the National Government cannot take control of it, whether it be civil or criminal, in any stage of its progress, its judicial power is, at least, temporarily silenced, instead of being at all times supreme. In criminal as well as in civil proceedings in State Courts, cases under the Constitution and laws of the United States might have been expected to arise, as, in fact, they do. Indeed, the powers of the General Government and the lawfulness of authority exercised or claimed under it, are quite as frequently in question in criminal cases in State Courts as they are in civil cases, in proportion to their number. The argument so much pressed upon us, that it is an invasion of the sovereignty of a state to withdraw from its courts into the courts of the General Government the trial of prosecutions for alleged offenses against the criminal laws of a state, even though the defense presents a case arising out of an act of Congress, ignores entirely the dual character of our Government. It assumes that the states are completely and in all respects sovereign. But when the National Government was formed, some of the attributes of state sovereignty were partially, and others wholly, surrendered and vested in the United States. Over the subjects thus surrendered, the sovereignty of the States ceased to extend. Before the adoption of the Constitution, each state had complete and exclusive authority to administer by its courts all the law, civil and criminal, which existed within its borders. Its judicial power extended over every legal question that could arise. But when the Constitution was adopted, a portion of that judicial power became vested in the new Government created, and so far as thus vested it was withdrawn from the sovereignty of the state. Now the execution and enforcement of the laws of the United States, and the judicial determination of questions arising under them, are confided to another sovereign, and to that extent the sovereignty of the state

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is restricted. The removal of cases arising under those laws, from State into Federal Courts, is, therefore, no invasion of State domain. On the contrary, a denial of the right of the General Government to remove them, to take charge of and try any case arising under the Constitution or laws of the United States, is a denial of the conceded sovereignty of that Government over a subject expressly committed to it. The second question is : 'Whether, if the case be removable from the State Court, there is any mode and manner of procedure in the trial prescribed by the act of Congress.'

"Whether there is or not, is totally immaterial to the inquiry

whether the case is removable; and this question can hardly have arisen on the motion to remand the case. The imaginary difficulties and incongruities supposed to be in the way of trying in the Circuit Court an indictment for an alleged offense against the peace and dignity of a state, if they were real, would be for the consideration of Congress. But they are unreal. While it is true there is neither in section 643 nor in the act of which it is a re-enactment, any mode of procedure in the trial of a removed case prescribed, except that it is ordered, the cause when removed shall proceed as a cause originally commenced in that court, yet the mode of trial is sufficiently obvious. The Circuit Courts of the United States have all the appliances which are needed for the trial of any criminal case. They adopt and apply the laws of the states in civil cases, and there is no more difficulty in administering the state's criminal law. They are not foreign courts. The Constitution has made them courts within the states to administer the laws of the states in certain cases: and so long as they keep within the jurisdiction assigned to them, their general powers are adequate to the trial of any case. The supposed anomaly of prosecuting offenders against the peace and dignity of a state, in tribunals of the General Government, grows entirely out of the division of powers between that Government and the Government of a state; that is, a division of sovereignty over certain matters. When this is understood, and it is time it should be, it will not appear strange that, even in cases of criminal prosecutions for alleged offenses against a state, in which arises a defense under United States law, the General

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Government should take cognizance of the case and try it in its own courts, according to its own forms of proceeding." ' § 124. Actions for trespass or conversion against the collector or deputy collector. When the tax has been collected by distraint no action will lie against the collector or deputy collector in trespass vi et amiisj ^ or on the case,* or for conversion; provided that in the case of the deputy the warrant was valid on its face,' and in the case of the collector when the assessment was certified to him by the Commissioner of Internal Revenue and he had no discretion to revise or alter it,* unless perhaps when the officer knew aliunde facts which made the proceedings void.* "It has been ruled that where an officer knows of facts aliunde his process, which render his proceedings void, he is not protected." * An action of trespass may be brought against the collector or deputy collector without any appeal to the commissioner.' ' And such suits are barred by the time prescribed by the statute of limitations of the state where they are brought.*

§ 125. Suits to recover money paid under protest. The usual method of contesting the validity of an income tax is to pay the money under protest and then to sue the collector for its recovery as money had and received to the plaintiff's use. This remedy, at least after the collector has paid the money

into the Treasury, is one which Congress has the power to regulate within its discretion,* or even to take away altogether.^

9 Tennessee v. Davis, 100 U. S. 8 Chief Justice Fuller, in Stuts-
257, 262-267, 271, 25 L. ed. 648, 650- man County v. Wallace, 142 U. S.
653. See, however, the strong dis- 293, 310, 35 L. ed. 1018, 1024, 12
senting opinion of Mr. Justice Clif- Sup. Ct. Rep. 227.

FORD, with whom Mr. Justice Field 1 Erskine v. Hohnhach, 14 Wall,
concurring. 613, 20 L. ed. 745. Contra, Gollens

% 124. 1 Baffin v. Mason, 15 Wall. v. Ahel, Woolworth, 293, 297.

671, 21 L. ed. 196; Erskine v. Eohn^ 8 lUd.; M'Cluney v. Silliman, 3 Pet.
hack, 14 Wall. 613, 616, 20 L. ed. 270, 277, 7 L. ed. 676; Andreae \.

745, 747. Bedford, 98 U. S. 225, 25 L. ed. 158:

2 Harding v. Woodcock, 127 U. S. Barney v. Oelrichs, 138 U. S. 529, 34
43, 34 L. ed. 580, 11 Sup. Ct. Rep. 6. L. ed. 1037, 11 Sup. Ct. Rep. 414.

3 Stutsman Co. v. Wallace, 142 U. § 125. 1 Snyder v. Marks, 109 U.
S. 293, 35 L. ed. 1018, 12 Sup. Ct. S. 189, 194, 27 L. ed. 901, 903, 3
Rep. 227; Baffin v. Mason, 15 Wall. Sup. Ct. Rep. 157. As to right gener-
671, 21 L. ed. 196; Erskine v. Hohn- ally to recover money paid for illegal
bach, 14 Wall. 613, 20 L. ed. 745. taxes after it has been distributed,

i Harding v. Woodcock, 127 U. S. paid over, or distributed, see note

43, 46, 34 L. ed. 580, 581, 11 Sup. Ct. in 11 L.R.A.(N.S.) 1104.

Rep. 6. 8 Cary v. Curtis, 3 How. 236, 11 L.

6 Stutsman Co. v. Wallace, 142 U. ed. 576. See also Hilton v. Merritt
S. 293, 310, 35 L. ed. 1018, 1024, 12
Sup. Ct. Rep. 227.

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This rule was explained in an early case against a collector of
customs.'

"It is contended, however, that the language and the pur-
poses of Congress, if really what we hold them to be declared
in the statute of 1839, cannot be sustained, because they would
be repugnant to the Constitution, inasmuch as they would de-
bar the citizens of his right to resort to the courts of justice.
The supremacy of the Constitution over all officers and author-
ities, both of the Federal and State Governments, and the sanc-
tity of the rights guaranteed by it, none will question. These

are concessa on all sides. The objection above referred to admits of the most satisfactory refutation. This may be found in the following positions, familiar in this and in most other governments, viz. : that the Government, as a general rule, claims an exemption from being sued in its own courts. That although, as being charged with the administration of the laws, it will resort to those courts, as means of securing this great end, it will not permit itself to be impleaded therein, save in instances forming conceded and express exceptions. Second, in the doctrine so often ruled in this court, that the judicial power of the United States, although it has its origin in the Constitution, is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good. To deny this position would be to elevate the judicial over the legislative branch of the Government, and to give to the former powers limited by its own discretion merely. It follows, then, that the courts created by statute must look to the statute as the warrant for their authority ; certainly they cannot go beyond the statute, and assert an authority with which they may not be invested by it, or which

110 U. S. 97, 28 L. ed. 83, 3 Sup. Ct. 219, 37 L. ed. 426, 428, 13 Sup. Ct. Rep. 548 ; Earnshaw v. V. 8. 146 U. Kep. 572.

S. 60, 36 L. ed. 887, 13 Sup. Ct. Rep. S CoA-y v. Curtis, 3 How. 236, 245, 14; Passavant v U. 8. 148 U. S. 214, 246, 11 L. ed. 576, 581, 582.

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may be clearly denied to them. This argument is in nowise impaired by admitting that the judicial power shall extend to all cases arising under the Constitution and laws of the United States. Perfectly consistent with such an admission is the truth, that the organization of the judicial power, the definition and distribution of the subjects of jurisdiction in the Federal tribunals, and the modes of their action and authority, have been, and of right must be, the work of the legislature. The existence of the judicial act itself, with its several supplements, furnishes proof unanswerable on this point. The courts of the United States are all limited in their nature and constitution, and have not the powers inherent in courts existing by prescription or by the common law.

"In devising a system for imposing and collecting the public revenue, it was competent for Congress to designate the officer of the Government in whom the rights of that Government should be represented, in any conflict which might arise, and

to prescribe the manner of trial. It is not imagined that by so doing Congress is justly chargeable with usurpation or that the citizen is thereby deprived of his rights. There is nothing arbitrary in such arrangements ; they are general in their character ; are the result of principles inherent in the Government ; are defined and promulgated as the public law." *

The Revised Statutes provide:

"No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made, to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the commissioner has been had therein: Provided, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought without first having a decision of the commissioner at any time within the period limited in the next section." *

4 Gary v. Curtis, 3 How. 236, 245, 6 U. S. Rev. Stat. § 3226, U. S. 246, 11 L. ed. 576, 581, 582. Comp. Stat. 1901, p. 2088.

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An appeal to the Commissioner of Internal Revenue for the return of the tax is, consequently, a condition precedent to such a suit.* The procedure upon such an appeal has been already considered. Upon the decision of the commissioner or at the expiration of six months from the date of the appeal, whether the commissioner has decided it or not, the suit may be brought. The burden of proof to show that the appeal was taken and the decision made, or the six months lapsed, has been held to rest upon the plaintiff ; * another case holds that a failure to bring an appeal before suit is a matter in abatement which, is not pleaded by the defendant, is waived."

No suit can be maintained unless the taxes were paid under duress and under protest.' The protest under the internal revenue laws need not, however, be in writing, and an oral protest is sufficient.^" Such protest must, however, be brought clearly to the attention of the collector.^* Where the payment was made by a check which bore upon its face the words "paid under protest to prevent distraint and penalty," and there was no evidence that this was brought to the attention of the commissioner, it was held to be insufficient.^^

There is a dictum of a State Court to the effect, that an action may lie to recover such a tax paid without protest, if an appeal to the commissioner has been duly taken after its payment.^' Where " the taxes were demanded by an officer having authority to collect them by distraint, without action, that

is sufficient duress of the plaintiff's property, to make the payment involuntary." ** In order to recover duties on imports

8 U. S. Rev. Stat. § 3226; Cheat- 456, 38 L. ed. 781, 14 Sup. Ct. Rep.

ham V. United States, 92 U. S. 85, 849; Philadelphia v. Collector, 5

23 L. ed. 561. Wall. 720, 18 L. ed. 614; Collector v.

TU. S. Rev. Stat. § 3226; Cheat- Hubbard, 12 Wall. 1, 20 L. ed. 272.

ham V. United States, 92 U. S. io Wright v. Blakeslee, 101 U. S.

85, 23 L. ed. 561. 174, 179, 25 L. ed. 1048, 1049.

8 Hubbard v. Kelley, 8 W. Va. 46. H Kings Co. Institution v. Blair,
8a Hendy v. Soule, Deady, 400, 116 U. S. 200, 205, 29 L. ed. 637, 659,

Fed. Cas. No. 6,359. 6 Sup. Ct. Rep. 353.

9 Arnson v. Murphy, 115 U. S. IS Kings Co. Sa/o. Institution v.
579, 29 L. ed. 491, 6 Sup. Ct. Rep. Blair, 116 U. S. 200, 203, 205, 29 L.

185; Bendy v. Soule, Deady, 400, ed, 657, 658, 6 Sup. Ct. Rep. 353.

Fed. Cas. No. 6,359 ; Wright v. 13 Hubbard v. Kelley, 8 W. Va. 46.

Blakeslee, 101 U. S. 174, 25 L. ed. 14 Hendy v. Soule, Deady, 400, 401,
1048; Stewart v. Barnes, 153 U. S. Fed. Cas. No. 6,359, per Dbadt, J.

§ 126] STATUTE OF LIMITATIONS. 519

illegally exacted, the protest must be in -writing, setting forthli
distinctly and specifically the grounds of the objections."

A finding of the court that the payment of the tax and
penalty was made under protest is sufficient to show that the
payment was not voluntary.^® Where a person from whom an
internal revenue tax has been illegally exacted accepts from an
officer of the United States without objection payment of the
sum thus illegally exacted, he thereby gives up his right to sue
for interest and incidental damages."

Where the sum for which the suit was brought consists of
the amount of a second assessment of a tax after the first,
the taxpayer "makes out his prima facie case by showing that
he paid the original assessment for the same months for which
he was assessed and by showing his payment of the re-assess-
ment under compulsion, his appeal, and the fact that he brought
his suit within the proper time after the appeal was taken.
The Government, to establish a defense, cannot rely solely upon
the record of a re-assessment, but should prove the jurisdic-
tional fact necessary to exist in order to enable the assessor to
make a re-assessment. That jurisdictional fact is, in my opinion,
the determination or the decision of the assessor that an error
has been committed." **

§ 126. Statute of limitations to suits against collectors.

The Revised Statutes contain a statute of limitations to suits against collectors as follows:

"No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: Provided, That actions for such claims which accrued prior to June six, eighteen hundred and

IBU. S. Rev. Stat. § 2931; West- Vi Stewart v. Barnes, 153 U. S.

roAj V. United States, 18 Wall. 322, 456, 38 L. ed. 781, 14 Sup. Ct. Rep.

21 L. ed. 763; Barney v. Wat- 849

son, 92 U. S. 449, 23 L. ed. 730 ; Dor 18 Shipman, J., in Barker v.

vies V. Arthur, 96 U. S. 148, 24 L. White, 11 Blatchf. 445, 19 Int. Rev.

ed. 758. Bee. 117, Fed. Cas. No. 996.

16 Wright V. Blakeslee, 101 U. S.

174, 25 L. ed. 1048.

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seventy-two, may be brought within one year from said date, and that where any such claim was pending before the commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section." ^

It seems that notice to the applicant of the decision of the commissioner upon the appeal is not necessary to make the decision operative and set the statute of limitations running.^ The taxpayer, "knowing when his appeal was taken, can always protect himself by bringing his suit after the expiration of the time named after the appeal, although he has not heard of a decision, being thus certain that he will have brought it within the time prescribed after a possible decision." '

When the first appeal was rejected for informality, and the second rejected on the merits, it was held that the time to sue ran from the decision on the second appeal.* It has been held that section 3226 is something more than a statute of limitations and is a condition precedent to the right of action. ° Consequently, where the tax was paid under protest in installments without any appeal to the commissioner, that the six months was not thereby extended.® This statute of limitations does not apply to suits against collectors or their deputies for trespass or conversion.''

§ 127. Collection of judgments against collectors. The Revised Statutes provide :

"When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, into the performance of his of-

§ 126. 1U. S. Eev. Stat. § 3227. i James v. Hicks, 110 U. S. 272, 2 Arnson v. Murphy, 115 U. S. 579, 28 L. ed. 144, 4 Sup. Ct. Rep. 6. 584, 29 L. ed. 491, 493, Sup. Ct. 5 Cheatham v. United States, 92 Rep. 185. U. S. 85, 23 L. ed. 561.

s Mr. Justice Blatchford, speak- 6 Cheatham, v. United States, 92 ing of suits by importers, Arnson v. U. S. 85, 23 L. ed. 561.

ilfMrp^ijf, 115 U. S. 579, 584, 29 L. ed. 1 ErsMne v. Hohnhach, 14 Wall.

491, 493, 6 Sup. Ct. Rep. 185. Com- 613, 20 L. ed. 745; Supra, § 124.

pare ErsMne v. Bohnbach. 14 Wall.

613, 20 L. ed. 745.

§ 128] SUITS AGAINST U. S. FOE EEPAYMENT OF TAXES. 521

ficial duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury or other proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall upon final judgment be provided for and paid out by the proper appropriation from the treasury." ^

This statute is constitutional.'^ After such a certificate has been given, the statute practically converts the suit against the officer in one against the United States.^

The certificate may be granted by a judge who did not try the case.* If, however, the trial judge has denied the application, another judge will rarely, if ever, grant it.^ The certificate cannot be granted before a trial.® When the Government has had no notice, actual or constructive, of the suit, and no opportunity to defend, it is not concluded by the certificate of probable cause.' In case a writ of error is sued out no money will be paid by the Treasury upon the judgment until an affirmance and entry of judgment upon the mandate of the court of review.' It has been held that after judgment neither the Government nor the collector is liable for interest ; ^ but upon affirmance the court of review will allow interest which

will be included in the judgment of affirmance entered upon the mandate in the court below.*" The commissioner may after judgment against the collector allow a repayment of the tax to the plaintiff even though no certificate of probable cause was granted.**

§ 128. Suits directly against the United States for the repayment of Taxes, after disallowance of appeal. After an appeal for the repayment of taxes has been allowed, an

§ 127. 1 U. S. Ev. Stat. § 989, U. 6 Cox v. Barney, 14 Blatchf. 289, S. Comp. Stat. 1901, p. 708. Fed. Cas. No. 3,300.

aCary v. Curtis, 3 How. 236, 245, 1 Dunnegan v. U. 8. 17 Ct. CI. 247.

246, 11 L. ed. 576, 581, 582. 8 Cochran v. Schell, 107 U. S. 625,

3 United States v. Sherman, 98 U. 27 L. ed. 543, 2 Sup. Ct. Rep. 827.

S. 565, 25 L. ed. 235 ; Flanders v. » White v. Arthur, 20 Blatchf. 232,

Seelye, 105 U. S. 718, 724, 26 L. ed. 10 Fed. 80.

1217, 1219. 10 Coeh/ran v. Schell, 107 U. S. 625,

*Cox V. Barney, 14 Blatchf. 289, 27 L. ed. 543, 2 Sup. Ct. Rep. 827.

Fed. Cas. No. 3,300. 11 United States v. Prerichs, 124

SFrerichs v. Coster, 23 Blatchf. U. S. 315, 31 L. ed. 471, 8 Sup. Ct,

74, 22 Fed. 037. Rep. 514.

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action lies upon the allowance in the Court of Claims or in some cases in a District Court as upon an account stated with the United States.^ Before 1887 no action could be maintained against the United States in case of a disallowance of such an appeal, except perhaps upon a judgment against a collector and a certificate of probable cause.^ The Tucker Act of March 3, 1887,^ as amended and re-enacted in the judicial Code, gives such jurisdiction to the District Courts where the amount of the claim does not exceed \$10,000,* and to the Court of Claims in all cases jurisdiction over "all claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable," ^ with the exception of Civil War claims. A party who has paid illegal taxes to an officer of the United

States under protest may waive the tort and sue to recover the money imder an implied contract.*

§ 128. 1 United States v. Kauf- s Jbid. § 145.

man, 96 U. S. 567, 24 L. ed. 792. 6 gvAft Co. v. V. 8. Ill U. S. 22,
8 Dunnegan v. V. S. 17 Ct. CI. 247. 28 L. ed. 341 ; Christie Street Com-
S 24 Stat, at L. chap. 359, sections mission Co. v. U. S. - C. C. A. - ,
1 and 2, p. 505, U. S. Comp. Stat. 136 Fed. E. 326, reversing 129 Fed.
1901, p. 752. R. 506; Foster's Fed. Pr. 5th ed.

*Jud. Code, § 24, subd. 20; 36 § 96.
Stat, at L. 1087.

PART II.

THE TEXT OF THE STATUTE.

INCOME TAX LAW OF OCT. 3, 1913.

[Public- JSTo. 16.]

[H. E. 3321.]

An Act to Reduce Taeiee Duties and to Peovide Rev-
enue EOE THE Government, and foe Othee Pueposes.
Be it enacted by the Senate and House of Representatives of
the United Slates of America in Congress assembled, * * * *

Section II.

A. Subdivision 1. That there shall be levied, assessed, col-
lected and paid annually upon the entire net income arising
or accruing from all sources in the preceding calendar year to
every citizen of the United States, whether residing at home
or abroad, and to every person residing in the United States,
though not a citizen thereof, a tax of 1 per centum per annum
upon such income, except as hereinafter provided; and a like
tax shall be assessed, levied, collected, and paid annually upon
the entire net income from all property owned and of every
business, trade, or profession carried on in the United States
by persons residing elsewhere.

Subdivision 2. In addition to the income tax provided un-
der this section (herein referred to as the normal income tax)
there shall be levied, assessed, and collected upon the net income

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of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds \$20,000 and does not exceed \$50,000, and 2 per centum per annum upon the amount by which the total net income exceeds \$50,000 and does not exceed \$75,000, 3 per centum per annum upon the amount by which the total net income exceeds \$75,000 and does not exceed \$100,000, 4 per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$250,000, 5 per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$500,000, and 6 per centum per annum upon the amount by which the total net income exceeds \$500,000. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury. For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become the surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall

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certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include 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, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines,

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6 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made: Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been, paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of \$3,000 or is not fixed or cer-

tain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000, plus \$1,000 additional if the person making-

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the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: Provided, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together.

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: Provided, however. That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of law-

ful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of \$3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized ; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the dis-

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trict where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: Provided further, That in either case above mentioned no return of income not exceeding \$3,000 shall be required : Provided further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to

him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: Provided further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the

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tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person. The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or, persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, em-
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employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officers of the United States Government authorized to receive the same ; and they are each hereby made personally liable for such tax. In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption : Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300 ; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the dis-

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trict in which return is made or to be made for him : Provided further J That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge

of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: Provided further. That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does; not amount to \$3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries ; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed) \$3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another

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dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe ; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding

one year, or both, in the discretion of the court.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any re-

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turn who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

G. (a) That the normal tax hereinbefore • imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year: Provided, however. That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payments of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor

to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare: Provided further. That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of

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Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to

reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not

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return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year : Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business : Provided further. That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed ; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company; (fourth) all sums paid by it within the year for taxes imposed, under the authority of the

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United States or of any State or Territory thereof, or imposed by the Government of any foreign country: Provided, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further. That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders, on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual

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premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at

the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: Provided^ however. That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income from said calendar year: Provided further. That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar

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year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed. All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal

year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business, setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately an rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws

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•of a foreign country the amount so paid in the maintenance and operation of its business within the United States; (fifth) the "total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as

shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses

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shall not return as income any portion of the premium deposit* returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves : Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits ; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed

under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of

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any foreign country; (eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: Provided, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided. That any and all such returns shall be open to inspection only upon the order of the President, under rules and

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regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, That the proper officers of any State imposing a general income tax may^

upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect, to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, . Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows :

"Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract. or particulars thereof to be seen or exaitined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return • and any offense against the foregoing provision shall be a mis-

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demeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

"Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or hav-

ing the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

"Sec. 31Y3. It shall be the duty of any person, partnership,, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax,, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing,, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business- or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by

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the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person : Provided further. That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest postoffice, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any under-

valuation or understatement, it shall be lawful for the collector to summon such person, or other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies ; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

"Sec. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list,

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the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view? and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which

■such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify

him in withholding the amount therein expressed from his next Foster Income Tax. — 35.

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payment to his creditor ; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: And provided further, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: And provided further. That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.

N. That for the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such

sums as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem necessary,, for information, detection, and bringing to trial and punish-

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ment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of \$800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States, or any of the Territories thereof: Provided, That no agent paid from this appropriation' shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than \$5 a day and \$3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service.

In the office of the Commissioner of Internal Revenue at Washington, District of Columbia there shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury one additional deputy commissioner, at a salary of \$4,000 per annum ; two heads of divisions, whose compensation shall not exceed \$2,500 per annum; and such other clerks, messengers, and employees, and to rent such quarters and to purchase such supplies as may be necessary : Provided, That for a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such

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compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: Provided further. That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work.

* * * ** ** * « »

Section III.

Provided further. That all excise taxes upon corporations imposed by section thirty-eight, that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: And provided further, That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act : Provided further. That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act ; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or

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accrued, or any suit or proceeding had or commenced in any

civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not

been passed.

U. That unless otherwise herein specially provided, this Act shall take effect on the day following its passage.

PART III.

THE STATUTE ANNOTATED WITH DIGEST,
OF CASES AND RULINGS.

A. Subdivision 1. That there shall be levied, assessed, collected and paid annually upon the entire net income

Act of August 28, 1894, § 27. The net income of a taxable person shall include 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, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income. B, infra.

There shall be levied, collected, and paid, upon the annual income. - Act of Aug. 5, 1861, § 49.

That there shall be levied, collected and paid annually, upon the annual gains, profits, or income. - Act of July 1, 1862, § 90; Act of June 30, 1864, § 116.

There shall be levied, assessed, and collected » » * upon the gains, profits, or income. - Joint Resolution of July 4, 1864.

That there shall be levied, collected, and paid annually upon the annual gains, profits, and income. - Act of March 3, 1865, § 1; Act of March

2, 1867, § 13.

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There shall be levied and collected annually, as hereinafter provided
* * * upon the gains, profits, and income. — Act of July 14, 1870, § 6.

In all the legislation from 1862 to 1870, the income tax properly so called was kept separate from the taxation of bonds, dividends, and earnings of corporations ; the former terminated under the Act of March 2, 1867, on Dec. 31, 1869, while the latter, under the Act of July 14, 1870, terminated Aug. 1, 1870.

Concord K. E. v. Topliff, 21 Int. Eev. Eec. 74, Fed. Cas. No. 3,093 (1874), U. S. Cir. Ct. K Dist. K Y., Shipley and Claek, J J.

Eailroad Co. v. Eose, 95 U. S. 78, 24 L. ed. 376 (1877),

SWAYNE, J., aCC.

The Act of Aug. 5, 1861, was repealed by the Act of July 1, 1862, and no taxes could thereafter be collected under it.

U. S. V. Tilden, 24 Int. Eev. Eec. 99, Fed. Cas. No. 16,519 (1878), U. S. Dist. Ct. S. Dist. N. Y., Blatchfoed, J.

The income tax imposed by the Act of Aug. 5, 1861, "has never been collected." Chase, C. J., in Bennett v. Hunter, 9 Wall. 326, 19 L. ed. 672, (1869), U. S. Supreme.

The successive acts of Congress upon the subject of taxing incomes are to be construed as in pari materia and requiring a return for taxation as income of all gains derived from the sale of stocks in 1868, if such stocks were purchased at any time after Aug. 5, 1861, the date of passage of the first income tax act.

U. S. V. Smith, 1 Sawy. 277, Fed. Cas. ISTo. 16,341 (1870), U. S. Dist. Ct Dist. Or. Deady, J.

Gross income is not property so as to be taxable under a city charter granting power to tax property. So held, of insurance premiums.

City of Dubuque v. Northwestern L. Ins. Co. 29 Iowa, 9 (1870).

Under a statute providing "that no income shall be taxed , which is derived from property subject to taxation," held, that income of a merchant dealing in leather was taxable although his stock was also taxed. The income taxed is more than income from property; it is income from industry and skill as

well.

Wilcox v. County Commissioners, 103 Mass. 544 (1870).

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"An income tax stands on different principles [from a tax on gross receipts]; its value is determinable; and the rules governing such tax are inapplicable to a tax on gross receipts."

Western Union Tel. Co. v. State Board of Assessment, 80 Ala. 273, 60 Am. Eep. 99 (1885).

A tax on gross receipts is not a tax on property or income.

Lott v. Eoss, 38 Ala. 156 (1861).

It is double taxation "first to tax property to the extent allowed by law, and then to tax the profits derived from such property."

City of New Orleans v. Fassmann, 14 La. Ann. 878 (1859).

"There has been a difference of opinion upon the point whether the tax imposed by this section is upon the corporation, on account of its net profits, or upon the income of the stockholder or bondholder; although in the present case it is immaterial which of these alternatives is adopted. We are not aware, however, that it has ever been suggested that it might be both in succession, — one year a tax on the income of the corporation, and the next upon the same fund as the income of the individual. We do not think it an admissible construction."

Matthews, J., in Bailey v. Railroad Co. 106 U. S. 109, at p. 116, 27 L. ed. 81, 84, 1 Sup. Ct. Eep. 62 (1882).

"There is nothing very poetic about tax laws. Wherever they find property, except what is devoted to public and charitable uses, they claim a contribution for its protection, without any special respect to the owner or his occupation, and without reflecting much on questions of generosity or courtesy."

Finley v. City of Philadelphia, 32 Pa. 381 (1859).

Property in transit through the state is not taxable.

Hoyt v. Commissioners, 23 N. Y. 224 (1861).

A resident of New York having no property within the state

is not taxable with respect to property without the state.

Ibid.

"A purely poll tax has no respect to property. We have no such tax. With us taxation is upon property, and so it is in all the states of the Union. So, in general, it is in all countries."

Ibid, per Comstock, J. at p. 226.

London County Council v. Attorney-General [1901] A. O. 26, 70 L. J. K B. N. S. 77, 83 L. T. N. S. 605, 49 Week. Eep. 686, 4 Tax Cas. 265.

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Per Lord Macnaghten [1901] A. C. pp. 35, 36: Income tax is a tax on income. It is one tax, not a collection of taxes essentially distinct. In every case the tax is a tax on income, whatever may be the standard by which the income is measured. It is a tax on "profits or gains" in the case of duties chargeable under Sched. (A.), and the expression "profits or gains" is constantly applied without distinction to the subjects of charge under all the Schedules.

Per Lord Davet (at p. 45) : "'No doubt from the nature of the case the word 'gains' is more frequently, though not exclusively, used in Schedule (D.), But the word 'profits' is the word selected by the legislature for describing generally the subjects of taxation under the Income Tax Acts. The income tax is intended to be a tax upon a person's income or annual profits, and although it is imposed in respect of the annual value of land, that arrangement is but the means or machinery devised by the legislature for getting at the profits. I think it cannot be doubted, upon the language and the whole purport and meaning of the Income Tax Acts, that it never was intended to tax capital - as income at all events."

See also Ystradyfodwg and Pontypridd Main Sewerage Board V. Bensted [1907] A. C. 264, 76 L. J. K. B. K S. 876, 97 L. T. IST. S. 141, 5 Tax Cas. 230, 23 Times L. E. 621, per the Earl of Halsbuey [1907] A. O. p. 267: "It appears to me that there is a mixture, not to say a confusion, of thought in using the word 'profits' in a sense which is not consistent with the mode in which it is used in the statutes relating to income tax."

"The profit of a trade or business is the surplus by which the receipts from the trade or business exceeded the expenditure necessary for the purpose of earning those receipts." Per Lord Heeschell in Russell v. Town and County Bank [1888], L. E. 13 App. Cas. p. 424.

"Profits and gains must be ascertained on ordinary principles of commercial trading." Per Lord Halsburt, L. C. in Gresham Life Assurance Society v. Styles, [1892] A. C. p.

316. "Profits are ascertained by setting against the income earned the cost of earning it." Per Lord Heeschell (p. 321).

"We cannot extend the words 'expended for the purposes of such trade,' so as to include expenses incurred to meet the con-

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tingency of loss while the trade is not being carried on." Per Bbtjce, J. in Ehyndey Iron Co. v. Fowler [1896] 2 Q. B. 84.

"The profit upon which the income tax is charged is what is left after you have paid all the necessary expenses to earn that profit : " per Lord Halsbuey, L. C. in Ashton Gas Co. v. Attorney-General [1906] A. C. p. 12.

Per Phillingee, J. : I take the word 'gains' to be no larger than the word 'profits.' " (Page 684) : "If a man is in receipt of \$5,000 a year, and he has to pay an annuity to the amount of \$500, he is no richer than if he was in receipt of \$4,500 a year, and had nothing which he was bound to pay. He is enabled to pay the \$500 a year by reason of the receipt of the \$5,000. He pays income tax in the first instance on \$5,000 a year, and deducts the income tax when he comes to pay the annuities to the annuitants who receive the \$500. But if I am wrong in that, which I admit perhaps is a large extension of the expression 'out of profits or gains,' . . . still in my view, this money is paid for the purpose of this Act out of 'profits or gains.' I am aware that it is to be paid, at any rate for the moment, though no profits are earned."

Delage v. Nugget Polish Co. [1905], 92 L. T. K S. 683.

The trustee, under a deed of assignment for the benefit of creditors by an insolvent firm of worsted spinners, continued to supply steam power to the sub-lessees and others, for the purpose of realizing the assets to the best advantage, but did not otherwise carry on the firm's business: Held, that the supply of power constituted a trade or business, and income tax was payable in respect of the profits therefrom, although the whole business previously carried on by the firm had resulted in a loss.

Armitage v. Moore [1900] 2 Q. B. 363, 69 L. J. Q. B. N. S. 614, 82 L. T. K S. 618, 4 Tax Cas. 199.

A cemetery company received payments from the proprietors of lairs, for which they undertook to keep the lairs in order in perpetuity. The directors resolved that such sums should be invested, and the interest only applied to the upkeep of the

lairs, but this was not made part of the original contract: - Held, that the capital sums received were to be included in the amount of the assessment.

Paisley Cemetery Co. v. Keith [1898] 25 K. 1080, 35 Scot. L. K. 947, 4 Tex. Cas. 1.

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Employee - Contingent Interest in Business. - ^Under a deed (J of arrangement, the owner of a business, with a view to its continuance after his death, provided (inter alia) that the net profits should be divided annually among certain selected employees, of whom the appellant was one, in certain shares. Ten per cent, of the profits was to be paid over to the said employees in proportion to their shares, but the remainder was not to be drawn out by them until the whole of the late owner's capital had been paid out. In the meantime, their shares were credited to their respective accounts in the books. The employees had no power to sell or dispose of their interests, which did not vest in them till the whole of the capital had been paid out. The appellant claimed abatement: - Held, that the business was ^ the property of the trustees, that the employees were only employees and not partners, and that the appellant was not assessable in respect of his share of the 90 per cent, which was placed to his credit in the books but was not paid over to him, it not being a part of his income. Per Lord Stoemonth-Daeling, B-F., p. 389 : "Of course the mere fact that under a man's contract of service a portion of his salary is held up or payment of it deferred * * * does not the less make it a part of his income. The deferred portion of the salary is still salary. * * * There is all the difference between a case of that kind, and one where the fund said to form part of a man's income may, from causes over which he has no control, never be his at all."

Walker v. Eeith [1906] 8 F. 381, 43 Scot. L. R 245.

Where a bank agent lived on the business premises as caretaker, and for the purpose of the performance of his duties, his residence there was held not to be a perquisite or profit of his office within this charge. Per Lord Watson [1892] A. C. p. 159 : " I do not think it comes within the category of profits, because that word, in its ordinary acceptation, appears to me to denote something acquired, and which the acquirer becomes possessed of to his advantage - in other words, money - or that which can be turned to pecuniary accounts."

Tennant v. Smith [1892] A. C. 150, 61 L. J. P. C. K S. 11, 66 L. T. N. S. 327, 3 Tax Cas. 158.

Under the Act of July 13, 1866, a fund retained by a bank

out of its earnings for the security of its depositors is taxable as "earnings, income, or gains."

Dollar Savings Bank v. U. S. 19 Wall. 227, 22 L. ed. 80 (1873), U. S. Supreme, Strong, J., affirming U. S. v. Dollar Savings Bank, 15 Int. Eev. Eec. 193, Fed. Cas. No. 14,979 (1871), U. S. Cir. Ct, E. Dist. Pa., McKennan, J.

All gains and profits derived from the sale of stock are taxable as income, whether specially mentioned in the act or not.

U. S. V. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341 (1870), U. S. Dist. Or., Deadt, J.

A mere exchange of property is not a sale the profits of which are to be returned for taxation.

Ibid.

Semble, otherwise if made with intent to evade the income tax law.

Ibid.

"Income and revenues," held in a State statute to include all earnings.

Tompkins v. Little Rock, etc. E. E. 15 Fed. 6 (1882), U. S. Cir. Ct., E. Dist. Ark., Caldwell, J.

Under a New York statute, held, that "profits or income," means gross profits or income, and not net profits or income.

People v. Supervisors, 18 Wend. 605 (1836), N. Y. Supreme. People V. Supervisors of Niagara, 4 Hill, 20 (1842), N. Y. Supreme; s. c. affirmed on appeal, 7 Hill, 504 (1844), N. Y. Ct. of Errors.

"It is undoubtedly true that 'profits' and 'income' are sometimes used as synonymous terms; but, strictly speaking, 'income' means that which comes in, or is received from any business or investment of capital, without reference to the outgoing expenditures; while 'profits' generally mean the gain which is made upon any business or investment of capital when both receipts and payments are taken into the account. 'Income,' when applied to the affairs of individuals, expresses the same idea that revenue does when applied to the affairs of a state or nation ; and no one would think of denying that our government has any revenue because the expenditures for a given pe-

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riod may exceed the amount of receipts." Beonson, J., in
Peo V. Supervisors, 4 Hill, 20, p. 23.

"Annual income" construed to mean "gross income."

[Citing Peo v. Supervisors, 4 Hill, 20.]

Goldsmith v. Augusta, etc. E. E. 62 Ga. 468, (1879).

"Property may have an annual value vs^ithout any income."
lIiLEEE^ J., in Troy Iron and ISTail Factory v. Corning, 45
Barb. 231, at p. 247 (1864), N. Y. Supreme.

Amounts received on life insurance and damages in actions
of tort are not income.

Euling, 7 Int. Eev. Eec. 59.

Money paid to the guardian of minor children by a railroad
corporation, in settlement of a claim for damages 1 reason of
the loss of the life of the father of said children is neither
legacy nor income.

Euling, 3 Int. Eev. Eec. 118.

Sums paid by a life insurance company on policies are not
liable to either legacies or income tax.

Euling, 3 Int. Eev. Eec. 140.

Legacies and successions are not returnable as income, but
when a legacy or succession consists of an annuity for a term
of years the annual payments constitute income and should be
taxed as such; although a succession tax or a legacy tax may
have been paid upon the present worth of the annuity.

Euling, 5 Int. Eev. Eec. 138.

arising or accruing from all sources in the preceding calendar year

The bill as first introduced in the House April 7th, 1913, said "received"
instead of "arising or accruing."

Ending December thirty-first: Provided, however. That for the year
ending December thirty-first, nineteen hundred and thirteen, said tax
shall be computed on the net income accruing from March first to December
thirty-first, nineteen hundred and thirteen, both dates inclusive, after
deducting five-sixths only of the specific exemptions and deductions herein
provided for. D, infra.

That it shall be the duty of any person * ♦ * made liable to any duty,
special tax, or other tax imposed by law, when not otherwise provided

for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return. — § 3173 of Rev. St. as amended by this act.

For the year next preceding the time herein named. — Joint Resolution of July 4, 1864.

Received in the preceding calendar year. — Act of August 28, 1894, § 27.

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for and in respect of the annual profits or gains arising or accruing. 5 and 6 Vict., c. 35, sec. 1, sched. D; 16 and 17 Vict., c. 34, sec. 1, sched. D.

"A profit accrues by reason of an office when it comes to the holder of an office as such — in that capacity — and without the fulfilment of any further or other condition on his part."

Herbert v. McQuade, [1902] 2 K. B. 631, 650; 71 L. J. K B. 884; 87 L. T. 349 ; 4 Tax. Cas. 489 ; Per Lord Stieeing, L. J.

The instructions of the Treasury Department endorsed upon the original forms direct as follows :

Physicians, lawyers, and other persons receiving fees or emoluments for professional or other services, shall include all unpaid accounts, charges for services or contingent income due for the year, if good and collectible.

Form 1040, Instruction 14; Form 1041, Instruction 12.

The amounts due or accrued to the individual members from the net earnings of a partnership, whether apportioned and distributed or not, shall be included in the individual's annual return.

Form 1040, Instruction 15 ; Form 1041, Instruction 14.

Interest due and accrued during the period for which return is made must also be included.

Forms 1030-1035, Instruction 18.

In returns by corporations accrued interest is considered to be interest due and payable, except in the case of banking or

other similar institutions, which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

Forms 1030-1035, Instruction 19.

It has been subsequently ruled as follows:

Commissions upon renewal premiums for insurance are considered as income when received and income for the period in which they are received.

T. D. 2011, July 28, 1914.

Returnable and taxable income is that actually realized during the year and evidenced by the receipt of cash or its equivalent. Until any appreciation taken up on the books has been

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SO realized it need not be returned as income. Mere book entries of appreciation in the value of capital assets are disregarded.

Acting Commissioner Williams in letter to collectors Aug. 14, 1914.

Under earlier statutes it was held that the amount of a promissory note, taken in one year and payable in another, was not taxable as income of the latter year, although it might perhaps have been so had it fallen due within the former year and been allowed to remain unpaid.

U. S. V. Schillinger, A. D. 1876, C. C. S. D. IST. Y. Johnson, J., 14 Blatchf. 71, Fed. Cas. ISTo. 16,288.

The tax cannot be avoided by leaving a good debt uncollected.

U. S. V. Frost, D. C. IST. D. 111., Dbummond, J., 9 Int. Eev. Eec. 41, Fed. Cas. iSV 15,172.

"In the absence of any special provision of law to the contrary, income must be taken to mean money, not the expectation of receiving it, or the right to receive it at a future time."

U. S. V. Schillinger, A. D. 1876, C. C. S. D. IST. Y. Johnson, J., 14 Blatchf. 71, Fed. Cas. No. 16,288.

Promissory notes until paid are not income, but only the ground of expecting income.

Hid.

The phrase "accruing interest" means interest which accumulated, but not due. It does not mean interest overdue and

unpaid.

Gross V. Partenheimer, 159 Pa. 556, 28 Atl. 370, 371.

Interest due but not paid and interest accrued but not due, although secured by mortgage, are not "surplus profits" of the creditor.

People V. San Francisco Sav. Union, 72 Cal. 199, 13 Pac. 498.

An accruing right is "one that is increasing by enlarging or augmenting."

Eichards v. Bellingham Bay Land Co. 4 C. C. A. 290, 7 U. S. App. 494, 54 Fed. 209, 2³, per Knowles, J.

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to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof.

The Income Tax on corporations, Is specified in G, infra.

Of every person residing in the United States. — Act of Aug. 5, 1861, § 49.

Upon the income, rents, or dividends accruing upon any property, securities, or stocks owned in the United States by any citizen of the United States residing abroad. — Act of Aug. 5, 1861, § 49.

Of every person residing in the United States. — Act of July 1, 1862, § 90.

And upon the annual gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned in the United States by any citizen of the United States, residing abroad, except as hereinafter mentioned, and not in the employment of the United States. — Act of July 1, 1862, § 90.

Of every person residing in the United States, or [and — Act of July 14, 1870] of any citizen of the United States residing abroad. — Act of June 30, 1864, § 116; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13; Act of July 14, 1870, § 6.

Of all persons residing within the United States or of citizens of the United States residing abroad. — Joint Resolution of July 4, 1864.

And a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof. — Act of July 13, 1866, § 1; Act of March 2, 1867,

§ 13.

There shall be levied and collected a tax of five per centum on all dividends in scrip * * to stockholders, policy-holders, or depositors, or parties whatsoever, including non-residents, whether citizens or aliens.
-Act of July 13, 1866, § 1.

And a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any persons residing without the United States and not a citizen thereof.
-Act of July 14, 1870, § 6.

By every citizen of the United States, whether residing at home or abroad, and every person residing therein. - Act of August 28, 1894, § 27.

An alien who resides in the United States is entitled to the exemption of the prescribed part of his income in the same manner and under the same circumstances as a native born or naturalized citizen.

Ruling, 6 Int. Rev. Rec. 18.

An alien received an inheritance in Europe and came to Foster Income Tax. - 36.

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this country to live. Ruled, that the income received on such inheritance was taxable.

Ruling, 3 Int. Rev. Rec. 140.

The wife of an alien is to be regarded as an alien herself for the purposes of taxation under the Internal Revenue Laws although she was a citizen prior to her marriage.

Ruling, 6 Int. Rev. Rec. 66.

One who buys a house in London, furnishes it, in his absence leaves a woman in charge of it, and takes his retinue to and from it, is taxable as a resident of Great Britain, although he stayed there only ten weeks and spent the rest of his time at his possessions in Ireland. He is not within a statutory exemption of persons "actually in Great Britain, for some temporary purpose only, and not with any view or intent of establishing his or her residence therein, and who shall not have actually resided in Great Britain for the period of six successive calendar months."

Attorney-General v. Coote, 4 Price, 183 [1817], Exch.

An individual held taxable as "residing in the United Kingdom" when he owns an estate there and lives there five months

in the year of tax, although domiciled abroad and carrying on all his business abroad.

Lloyd V. Inland Revenue, 21 Scot. L. R. 482 [1884], Scot. Ct. Sess.

"A man cannot have two domiciles at the same time, but he certainly can have two residences."

Ibid., Lord Inglis at p. 484.

Attorney-General v. M'Lean (1863), 32 L. J. Exch. 1ST. S. 101, 8 L. T. N. S. 113, 1 Hurlst. & C. 750, 9 Jur. 1ST. S. 338. Per Pollock, C. B. (1 Hurlst. & C. p. 761) : "The word 'reside' does not necessarily mean 'dwell' " ; and according to Maetin, B. (p. 762), there was "strong ground for contending that one who spends the day at his shop attending to his business, and may there be seen and conversed with on matters of business, and does not choose to be communicated with elsewhere, is 're-siding' there."

Attorney-General v. M'Lean (1863) 32 L. J. Exch. K S. 101, 8 L. T.]Sr. S. 113, 1 Hurlst. & C. 750, 9 Jur. E". S. 338.

A master of a trading vessel, tenant of a house occupied by

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his family and by himself when in Scotland held, taxable as a "resident of Great Britain," although only in the country 88 days in the year. Young v. Inland Revenue, 12 Scot. L. E. 602 [1875], Scot. Ct. Sess.

So held, also, where the master owned his house in which his family resided, but was absent the whole year. Rogers v. Inland Revenue, 16 Scot. L. E. 682 [1879], Scot. Ct. Sess.

Attorney General McEeynolds in an opinion sent to the Secretary of the Treasury October 23, 1913, construed the statute as exempting the interest upon bonds executed by a resident or citizen of the United States, whether secured by a mortgage or otherwise, when the bonds were held or owned by a non-resident alien, irrespective of where the written bonds are in fait kept or the interest payments made.

An Act passed in 1895 hj the Colony of Victoria levied a tax on all income derived by any person from the produce of property within Victoria. It was held that an insurance company which did no insurance business in Victoria, but loaned money there on the security of land, was taxable in that colony on the income therefrom derived. England v. Webb [1898], App. Cas. 758, 67 L. J. P. C. K S. 1200. See Scotch Provident Institution V. Allen [1903], App. Cas. 129, 72 L. J. P. C. K S. 70.

"I agree with the opinion expressed by the late Lord Chief

Justice CoCKBTjEN in *Sulley v. Attorney General*, 5 H. & N. 711, that it is probably a question of fact where the trade is carried on. * * * If it is a question of fact in each case it will be impossible to make an exhaustive definition of what constitutes carrying on a trade." *Werle v. Colquhon*, L. E. 20' Q. B. Div. 753 (188) ; lb. by Lord Esher, M. E., at p. 758.

A firm of wine merchants in France employed a London firm as agents. They kept no wine in England, but their name was on a window on the premises of the agents, and was in the London Directory. All orders were forwarded to France, all payments were made direct or to the agents, who forwarded the amount without carrying it to any account. Held, taxable, as exercising a trade in England.

Werle v. Colquhon, L. E. 20 Q. B. Div. 753 (1888).

A wine merchant living in France \ilao has agents in England to sell his wines on a del credere commission, and has his name on their door and an oifice for his own use when he is in England is taxable in respect of "a trade exercised within the United Kingdom."

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Tischler v. Apthorpe, 52 L. T. K., N. S. 814 (1885), Q. B. D., 33 W. E. 548, 2 Tax Cas. 89.

The appellants, a firm of wine merchants and shippers whose chief oflice was at Rheims, in France, where they resided, were in the habit of shipping wine to England for sale. An agent acted as their sole representative in England for the sale of their wine and the transactions of their business, and he received as an equivalent for his expenses in rent, clerks' salaries, and otherwise, and as remuneration, a commission on all wine sold in England. This agent carried on no other business, and the premises used by him were taken in his own name. On behalf of the appellants, he employed travellers and appointed sub-agents, who sought for orders for the appellants' wine in various parts of England, and orders were sought and taken by him as agent for the appellants. When obtained, the orders were transmitted to the agent and forwarded by him direct to the appellants at Eheims. In response to the orders so received, either the agent supplied the wine from the appellants' smaller stock of wine in England, or, if the order was for a considerable quantity, the appellants shipped the wine direct to the customer. The wines were invoiced to the customer in the appellants' own name as vendors. The appellants kept a banking account in London. All goods were shipped from France at the purchaser's risk. The appellants took all gains and suffered all losses occasioned on sale of any wine in England. The amoimts due for wine sold were collected by the agent. Bills and drafts were drawn payable to the appellants' order, and when received were transmitted by the agent to the appellants at Rheims for endorsement. The appellants were assessed in

the name of their agent. Held, that a trade was exercised within the United Kingdom.

Pommery and Greno v. Apthorpe (1886), 56 L. J. Q. B. 155; 56 L. T. 24; 35 W. E. 307; 2 Tax Cas. 182.

A French wine merchant appointed an English firm as his agents in England to canvass for orders. These orders were transmitted to their principal abroad, who exercised his discretion as to executing them. The wine was sold as lying in the foreign warehouse, the customer paying the cost of packing and carriage, and taking all risk. Payments were for the most part made direct to the French wine merchant, though sometimes

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they were made through the agents. Held, that the contracts for the sale and the deliveries of the wine took place abroad, and that the French wine merchant who had been assessed to income tax in the name of his agents did not exercise a trade within the United Kingdom under Sched. (D.) : - Semhle, the words "having the receipt of any profits or gains" apply not only to "receiver" but also to "factor" and "agent." Grainger & Son v. Gough (1896) A. C. 325 ; 65 L. J. Q. B. 410 ; 74 L. T. 435 ; 44 W. E. 561 ; 3 Tax Gas. 462. Per Lord Heeschell, A. C., p. 387 : "In the case of a trade exercised in this country, I think any agent who received, for the foreigner exercising such trade, moneys which included trade profit would be within the provisions of § 41." Per Lord Moeois (p. 345) : "In the present case the appellants were, in fact, as agents of their principal, Eoederer, in receipt of moneys which included profits and gains and, being so, come within the operation of § 41 of 5 & 6 Vict. c. 35." Per Lord Davey (p. 347) : " 'Having the receipt of any profits or gains' does not mean 'any part of the profits or gains,' but 'the taxable profits or gains of any business,' etc. I feel great doubt whether, on the facts of the present case, Messrs. Grainger & Son were such agents; but it is not necessary to decide that."

A foreign firm was in the habit of making consignments of goods to an English firm for sale on commission. The English firm sold the goods in their own name, received the proceeds of sale, and assumed all responsibility of payment by the purchasers; they rendered statements to the foreign firm showing full receipts, and debited the account with their charges and

commission, remitting to, or drawing on, the foreign firm for the credit or debit balance, as the case might be: Held, that the foreign firm exercised a trade in the United Kingdom and was assessable for the profits thereof through the English firm as its agents.

Watson V. Sandie and Hull, 1 Q. B. 326; 67 L. J. Q. B. 319' j 77 L. T. 528 ; 46 W. E. 202 ; 3 Tax Gas. 611 (1898).

A Belgian firm employed the appellants, who carried on business as yarn merchants and commission agents in Glasgow, as agents for the sale of their yarns in the United Kingdom. The offers received by the agents were submitted to the firm for approval, and, if approved, contracts were entered into in the

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United Kingdom by the agents on behalf of the firm. The goods were consigned to the agents for delivery to the customers in the United Kingdom to whom the goods were invoiced by the agents. The agents received payment for the goods and discharged the accounts on behalf of the firm. The agents sent monthly account sales to the firm and rendered a quarterly statement for expenses and commission. They were paid by commission on the business done and were liable for one-half of the bad debts : Held, that the firm exercised a trade within the United Kingdom, and that the appellants as agents were rightly assessed.

Macpherson & Co. v. Moore, S. C. 1315; 49 Sc. L. R. 979; 6 Tax Cas. 107 (1912).

A partner residing in England and member of a New York firm is not taxable with respect to profits of the firm made in New York by the exportation of goods from England. The firm does not carry on a trade in England; it is a mere customer there.

Sulley V. Attorney General, 5 H. & K 711 (1860), Exch., 29 L. J. Exch. 464, 2 L. T. 439, 8 W. R. 472, 6 Jur. (IST. S.) 1018, 2 Tax Cas. 149 (1860), reversing Attorney General v. Sulley, 4 H. & N. 769 (1859), Exch.

Income from a fund in India passing through the hands of an agent in London to the plaintiff residing in France is not taxable as "gains and profits in Great Britain."

Udney v. East India Co. 13 C. B. 733 (1853), Ct. Com. Bench. See citations infra, pp. 470-481.

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by

which the total net income exceeds \$20,000 and does not exceed \$50,000, and 2 per centum per annum upon the amount by which the total net income exceeds \$50,000 and does not exceed \$75,000, .3 per centum per annum upon the amount by which the total net income exceeds \$75,000 and does not exceed \$100,000, 4 per centum per annum upon the amount by which the total net income exceeds \$100,000 and does not exceed \$250,000, 5 per centum per annum upon the amount by which the total net income exceeds \$250,000 and does not exceed \$500,000, and 6 per centum per annum upon the amount by which the total net income exceeds, \$500,000.

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All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section.

See subsections D, E, I.

A subsequent clause of the same subdivision speaks of this as the "additional tax." In Great Britain it is termed "the supertax." — Finance Act 1904, 4 Edw. VII. c. 7, *infra*.

Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the commissioner of Internal Revenue and approved by the Secretary of the Treasury.

See subsection D and Rules and Regulations, *infra*.

For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be *prima facie* evidence of a fraudulent purpose to escape such tax;

For what constitutes a sham corporation, see *Lehigh Mining & Mfg. Co. v. Kelly*, 160 U. S. 327, 336, 40 L. ed. 444, 447, 16 Sup. Ct. Rep. 307; *Miller & Lux v. East Side Canal &*

Irrigation Co. 211 U. S. 293, 53 L. ed. 189, 29 Sup. Ct. Rep. Ill ; Southern Realty Investment Co. v. Walker, 211 U. S. 603, 53 L. ed. 346, 29 Sup. Ct. Rep. 211 ; Gelders v. Haygood, 182 Fed. 109 ; Kreider v. Cole, 79 C. C. A. 339, 149 Fed. 647 ; Ee Berkowitz, 173 Fed. 1013 ; Re Shaffer & Stem, 185 Fed. 549; Re Muncie Pulp Co. 71 C. C. A. 530, 139 Fed. 546; Re Iron Clad Mfg. Co. 112 C. C. A. 345, 191 Fed. 831; s. c. 194 Fed. 906 ; Re Kemit Mfg. Co. 192 Fed. 392 ; Re Holbrook Shoe & Leather Co. 165 Fed. 973. Foster's Fed Pr. §§ 47, <<35.

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but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business.

When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.

B. That, subject only to such exemptions and deductions as are

hereinafter allowed,

the net income of a taxable person shall include gains.

That in estimating said income. — Act of Aug. 5, 1861, § 49.

That in estimating said annual gains, profits, or income, whether subject to a duty of three per centum, or of five per centum. — Act of July 1, 1862, § 91.

That in estimating the annual gains, profits, or income of any person. — Act of June 30, 1864, § 117.

That in estimating the annual gains, profits, or income, as aforesaid. — Joint Resolution of July 4, 1864.

That in estimating the annual gains, profits, and income of any person. — Act of March 3, 1865, § 1.

That in estimating the gains, profits and income of any person. — Act of March 2, 1867, § 13; Act of July 14, 1870, § 7.

That in estimating the gains, profits, and income of any person. — Act of August 28, 1894, § 28.

profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, Whether such income is derived from any kind of property, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever. — Act of Aug. 5, 1861.

Whether derived from any kind of property, rents, interest [interests —

Act of June 30, 1864] dividends, salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any source whatever, except as hereinafter mentioned. — Act of July 1, 1862, § 90; Act of June 30, 1864, § 116.

Whether derived from any kind of property, rents, interest [interests — Act of March 2, 1867] dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever. — Act of March 3, 1868, § 1; Act of March 2, 1867, § 13.

Derived from any source whatever, whether within or without the United States, except as hereafter provided. — Act of July 14, 1870, § 6.

The gains, profits, and income of any business, trade, employment, office, or vocation. — Act of July 14, 1870, § 7.

Whether said gains, profits, or income be derived from any kind of

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property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever. — Act of August 28, 1894, § 27.

The joint ownership of trading vessels is a trade or concern in the nature of a trade.

Attorney General v. Borrodaile, 1 Price 148 (1814), Exch., Thompson, C. B.

Emoluments of Office. — Bank Agent's Residence. — A banking company assigned to their agent as a residence a portion of their bank premises in respect of which they were assessed under Sched. (A.). The agent was required to reside in the building as the servant of the bank, and for the purpose of the performance of his duties: — Held, that the value of the residence was not an emolument of office in respect of which the agent was chargeable with income tax; and was not to be included in estimating the total amount of the agent's income for the purposes of a claim of abatement. Per Lord Watson, . [1892] A. C, p. 159 : "Income arising from employment as a bank agent is assessable under Sched. (E.) in all cases where the bank which employs him is a company or society, whether corporate or not corporate, as specified in the 3rd rule."

Tennant v. Smith [1892] A. C. 150, 61 L. J. P. C. N. S. 11, 66 L. T.]Sr. S. 327, 3 Tax Gas. 158. See also McDougald V. Sutherland (1894), 21 R. 753; 31 Scot. L. R. 630, 3 Tax Gas. 261; and Corke v. Fry (1895), 22 R. 422; 32 Scot. K R. 341, 3 Tax Gas. 335, set out under § 163, post.

Assistant Master. — Scheme for Provident Fund. — Under a provident fund scheme an assistant master at a public school had £35 placed to his credit annually by the governors. The total amount of these sums was to be paid to him on his leaving

under certain conditions, but in the meantime the annual amounts were not paid over to him : - Held, that the true effect of the scheme was to add £35 to his salary, and that he was liable to pay income tax on that sum under Sched. (E).

Smyth V. Stretton, [1904] W. JST. 90, 90 L. T. N. S. 756, 53 Week. Rep. 288, 5 Tax Gas. 36.

or from professions, vocations,

Persons receiving profits from betting systematically carried

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on by them throughout the year, are chargeable with income tax on such profits as derived from a "vocation."

Partridge v. Mallandine, L. K. 18 Q. B. Div. 276 (1886).

"The word 'vocation' is analogous to 'calling,' a word of wide aignification, meaning the way in which a man passes his life."

Ibid., Denman, J., at p. 278.

The bursar of a college, an officer of the college, but not a member of the corporate body, was held liable to direct assessment upon the amount of his salary, as holding "an office or employment of profit" within Sched. (E.). Per Chaeles, J., [1891] 1 Q. B., p. 574: "It is suggested that the Crown will thus receive income tax twice, because the money has already paid the tax in the hands of the corporation itself. If this be so, and it seems to be by no means impossible in this case, it certainly ought not to be so, for § 54 of the Act of 1842 provides that officers of a corporation are to prepare statements of their profits and gains and that 'nothing hereinbefore contained shall be construed to require in such statement the inclusion of salaries, wages or profits of any officer of such corporation, fraternity, fellowship, company or society otherwise chargeable under this Act.' "

Langston v. Glasson, [1891] 1 Q. B. 567, 60 L. J. Q. B. N. S. 356, 65 L. T. K s. 159, 39 Week. Rep. 476, 3 Tax Cas. 46.

businesses, trade, commerce, or sales,

Net profits realized by sales of real estate purchased within the year for which income is estimated shall be chargeable as income. - Act of June 30, 1864, § 116.

All income or gains derived from the purchase and sale of stocks or other property, real or personal; and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first

of December.— Act of June 30, 1864, § 117.

Net profits realized by sales of real estate purchased within the year for which income is estimated shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year. • * * All income or gains derived from the purchase and sale of stocks or other

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property, real or personal and of live stock, and the amount of live stock, sugar, wool, butter che[e]se, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included. — ^Act of March 3, 1865, § 1.

Profits realized within the year from sales of real estate purchased within the year or within two years previous to the year for which income was [is] estimated. • « « The amount of sales of live stock, sugar, wool, butter, che[e]se, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, not including any part thereof directly consumed by the family. — Act of March 2, 1867, § 13.

Profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, fruits, vegetables or other productions, being the growth or produce of the estate of such person, but not including any part thereof consumed directly by the family. — ^Act of July 14, 1870, § 7.

Profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated. — Act of August 28, 1894, § 28.

The amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable, or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated. — Act of August 28, 1894, § 28.

Profits on the sales of real estate bought before the passage of the first income tax were not taxable.

Merchants' Ins. Co. v. McCartney, 12 Int. Eev. Eec. 122, Fed. Cas. No. 9,443 (1870), U. S. Cir. Ct., Dist. Mass., Lowell, J.

Under Alabama Revised Code §§ 434, 435, held, that income must pay tax although invested in real estate upon which a tax was levied and collected within the same fiscal year.

Lott V. Hubbard, 44 Ala. 593 (1870).

A sale of a leasehold estate is not a sale of real estate.

Euling, 2 Int. Eev. Eec. 44.

But in assessing income, leases of lands for 99 years are to

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be treated as realty if such leases are made realty by the laws of the state in which the leased lands are situated.

Euling, 3 Int. Rev. Eec. 3.

The terms used in defining real estate in § 126, Act of June 30, 1864, do not include mules and implements of agriculture, although they are included in those terms according to the meaning given them by the Civil Code of Louisiana.

Euling, 3 Int. Eev. Eec. 37.

A sale of underlying coal to be paid for at a certain rate for each ton mined is treated as a sale of personalty. In determining the cost, the amount paid by the purchaser may be included, but not the value of the services of himself or his family.

Euling, 5 Int. Rev. Eec. 154.

The profits from sales of mining claims are taxable as income.

Euling, 4 Int. Eev. Eec. 124.

Losses within the year 1866 on sales of real estate purchased since December 31st, 1863, may be deducted in a return of income of the year first above mentioned.

Euling, 5 Int. Eev. Eec. 115.

Expenditures for labor in one calendar year cannot be deducted from the proceeds of the crop sold in the subsequent year. Losses in farming may be deducted from any business income. Expenditures for labor in a year in which no crop is sold, may be deducted from business income, but not from rents,, dividends, and the like.

Ruling, 4 Int. Rev. Rec. 12.

The farmer in returning income from his farming operations, should enter in his income all amounts received for animals

sold, and for the wool, hides, etc., of animals which have died, provided such wool, etc., was sold. He may then deduct the sums actually paid as purchase-money for the animals sold within the year, or which have died within the year. If the animals were raised by the owner, no deduction can be allowed.

Ruling, 3 Int. Rev. Rec. 100.

Rent for land paid in produce is income. The expenses of carrying on premises so leased are to be deducted from the income of the lessee only.

Ruling, 5 Int Rev. Rec. 154.

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The profit realized on a sale of standing timber or felled timber is taxable without reference to the time when the land was purchased.

Euling, 1 Int. Rev. Rec. 171.

When timber is sold either standing or cut, the taxable profits are arrived at by estimating the value of the land after the timber is removed and adding thereto the net amount received for the timber, and from this amount deducting the estimated "value of the land on the first of January, 1862.

Euling, 2 Int. Rev. Rec. 61, amending Euling, 1 Int. Rev. Rec. 171.

Under former acts all profits on sales of personal property were taxable as income for the year of sale without reference to the date of purchase.

Euling, 1 Int. Rev. Rec. 196.

These acts make a plain distinction between profits on sales of stock, and profits on sales of real estate. The taxable profits on sales of real estate, are those which accrue when the estate was purchased within the year. Profits on sales of stock are taxable without reference to the time of purchase.

Euling, 1 Int. Rev. Rec. 139.

Under the Texas Statute, taxes are assessed on the income derived from sales of goods made in excess of their cost after allowing the statutory deductions.

Millar v. Douglass, 42 Tex. 288 (1875).

If fractions of a patent right are sold, the estimated outlay for such fractions may be deducted from the receipts of sales.

Euling, 1 Int. Eev. Eec. 188.

The profits on the sale of a patent right are taxable as income. They are to be estimated by subtracting from the amount received the sums actually expended therefor, whether in purchasing the right and obtaining the patent, or in perfecting the invention, but no allowance can be made for the time or labor or personal expenses of the inventor.

Euling, 1 Int. Eev. Eec. 188.

or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property,

A. before his death buys a farm from B. for \$4,000. B.

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makes a deed to A.'s son C. C. is chargeable with \$4,000 of income.

Ruling, 3 Int. Eev. Eec. 140.

A. loans to B. \$5,000 for five years, and in order to avoid' the income tax takes a deed of the farm and stipulates to reconvey the property at the end of five years upon payment of \$7,000. Held, the transaction is equivalent to the giving of a mortgage and the annual gain accruing to the lender is income.

Euling, 3 Int. Rev. Eec. 140.

When land is leased for a term of years under a contract- that the lessee shall erect a building thereon, the title to which,, subject to the use of the lessee during the term, immediately vests in the lessor, the expense of erecting the building is in the nature of rent and is returnable as such in the income return of the lessor.

Ruling, 6 Int. Eev. Rec. 130.

also from interest,

In estimating the annual gains, profits, or income of any person, the- interest over and above the amount of interest paid upon all notes, bonds and mortgages, or other forms of indebtedness, bearing interest, whether due and unpaid or not, if good and collectible, shall be included and assessed as part of the income of such person for each year. - Act of June 30, 1864, § 117. Cf. Ibid. § 116.

Provided that incomes derived from interest upon notes, bonds and other

securities of the United States, and also all premiums on gold and coupons, shall be included in estimating incomes under this section. — Act of March 3, 1865, § 1, amending this section.

In estimating the gains, profits and income of any person, there shall be included all income derived from * * * interest received or accrued upon all notes, bonds and mortgages, or other forms of indebtedness, bearing interest, whether paid or not, if good and collectible, interest upon notes, bonds or other securities of the United States; and the amount of all premium on gold and coupons. — Act of July 14, 1870, § 7.

And be it further enacted. That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct

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and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise." — Act of June 30, 1864, § 122. In estimating the accounts, profits and income of any person, there shall be included all income derived from interest received upon notes, bonds and other securities except such bonds of the United States, the principal and interest of which are by the law of their issuance exempt from all Federal taxation. — Act of August 28, 1894, § 28.

On November 2, 1895, the S. A. R. granted H. J. S. a concession for the construction of a railway, and the S. A. E. guaranteed to a company which was formed to take over the railway interest at 4 per cent, on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On Feb. 18, 1902, the British Government gave notice to expropriate the railway under the terms of the concession. They recognized the validity of the concession and admitted liability to pay all arrears of interest. They paid 97,5061. 16s. lid. as "guaranteed

interest on share capital, at 4 per cent, per annum from January 1, 1899, to November 14, 1903," in addition to the other payments on the exportation. Held, that the 97,5061. 16s. lid. was not a part of a sum paid by the British Government as the price of the company's undertaking; that it must be treated as the gross revenue of the company earned as a trading company from January 1, 1901, to November 14, 1903, and that after deducting certain expenses incurred by the company during the same period of benefit, the three years' average must be applied,, and the income tax was payable on one-third of the balance only.

Pretoria-Pietersburg Railroad v. Elgood, 98 L. T. N. S. 741
— C. A.

When interest is in fact paid by a railroad, an assessment of a tax thereon is justified, even though the interest was paid out of a fund not included in the act, and therefore not taxable

Improvement Company v. Slack, 100 U. S. 648, 25 L. ed..
609 (1879), Cliffoed, J.

The Act of July 14, 1870, taxed only interest paid, not interest merely accrued or payable.

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U. S. V. Louisville, etc., E. K. 33 Fed. 829 (1888), U. S.
Cir. Ct. Dist. Ky., Bae, J.

Under the Act of June 30, 1864, a railroad deducted the income tax from interest due a municipal corporation. Held, that the city could not recover the tax, so deducted, from the corporation. Having neglected to resist the collection of the tax by the United States from the railroad, it was precluded from raising the question of the legality of the tax as against the railroad.

Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. ed.
1043 (1870), U. S. Supreme, Davis, J. And see U. S. v. Railroad Company, 17 Wall. 322, 21 L. ed. 597 (1872), U. S. Supreme, in which the United States was not allowed to collect the tax from the city.

A sum paid by a loan society as interest to its depositors is taxable.

Mersey Loan, etc., Co. v. Wootton, 4 Times L. E. 164
(1887), Q. B. Div.

The funding of past-due coupons in second-mortgage bonds, held, not a payment of interest out of earnings so as to be taxable.

Memphis, etc., E. E. v. U. S., 108 U. S. 228, 27 L. ed. 711,
2 Sup. Ct. Eep. 482 (1882), Waite, C. J.

The acts of Congress distinguished interest to depositors from dividends to them. Held, on the facts, that certain payments were made as dividends and not as interest.

Cary v. San Francisco Savings Union, 22 Wall. 38, 22 L. ed. 779 (1875), U. S. Supreme, Waite, C. J., better reported in 21 Int. Eev. Eec. 84.

Cary v. Savings and Loan Society, 154 U. S. 615, and 22 L. ed. 780, 14 Sup. Ct. Eep. 1208 (1875), Waite, C. J., reserving San Francisco Savings and Loan Society v. Cary, 17 Int. Eev. Eec. 109, Fed. Cas. N'o. 12,317 (1873), U. S. Cir. Ct. Dist. Cal. Sawtee, J.

A life insurance company, receiving untaxed interest on a portion of its investments, was held liable to assessment in respect thereof, although the amount of the interest on its other investments on which tax had been deducted, exceeded the profits earned by the company. Per Lord Esher, M. E. L. E. 22 Q. B. Div. p. 450 : "Interest of money ought not first to be taxed

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as a separate subject-matter of taxation, and then brought again into account in arriving at the profits and gains of a business and so taxed again."

Clerical, Medical and General Life Assurance Society v. Carter (1889), L. K. 22 Q. B. Div. 444, 58 L. J. Q. B. N. S. 224, 37 Week. Kep. 346 ; 2 Tax Cas. 437.

A life insurance company derived the bulk of its gross income from taxed sources. The amount of this taxed income exceeded the company's net profits. The company received in addition certain interest from which tax was not deducted: - Held, that this interest was properly assessable under Cases III. and IV. of Sched. (D.) in § 100. Per the Lord President, 5 Tax Cas., p. 226 : "I thought it had been settled beyond all possibility of doubt, that inasmuch as the Income Acts do not only deal with profit in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed, when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both - that is to say, it cannot take a trading account which has money, its assets and investments - and first of all charge income tax upon the produce of

investments, and then over and above charge on the profits. It must elect between the two."

Evell V. Edinburgh Life Insurance Co. (1906), 5 Tax Cas. 2-21.

Interest is taxable although it accrue de die in diem, as where a purchaser failed to pay the purchase price on the day appointed and interest was due until the price was paid. It is not necessary that the interest should be paid only annually.

Bebb V. Bunny, 1 Kay & J. 216 (1854), Chancery Chambers, Wood, V. Ch.

On ISTovember 2, 1895, the South African Republic granted a concession for the construction of a railway, and guaranteed to a company which was formed to take over the railway interest at 4 per cent, on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On February] 8, the British Government gave notice to expropriate the rait-Foster Income Tax. - 37.

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way under the terms of the concession. They recognized th& validity of the concession, and admitted the liability to pay all arrears of interest. They paid 97,5061. 16s. 14d. as "guaranteed interest on share capital at 4 per cent, per annum from the 1st Jan. 1899 to 14th Nov. 1903, "in addition to the other payments on the appropriation. Held, that the Crown was entitled to income tax on the sum of 97,5061. 16s. lid.

Pretoria-Pietersburg Eailway v. Elgood, 95 L. T. IST. S. 468 Walton, J.

The Secretary of State for India was empowered under certain contracts to purchase the plaintiff company's railways at the expiration of a specified number of years, either for a gross sum or for an annuity for a term of years. Before the period arrived at which the option to purchase was exercisable, negotiations were entered into between the parties for the purchase of the railways, and an agreement was arrived at, subsequently sanctioned by Parliament, by which the secretary of State purchased the railways for an annuity terminable at the end of seventy-three years, and payable half yearly to the plaintiffs, the annuity being 51. 12s. 6d. for each 100l. of capital stock committed at a price of Z125. This annuity was calculated on the basis of 51. 7s. 6d., part thereof, being interest at the rate

of 4l. 6s. per cent, on the 1251., and of a sum of 5s. other part thereof, being the amount required to be set aside and invested half yearly at a rate of interest in order to produce, by means of a sinking fund, the capital sum of 1251. at the end of the seventy-three years: — Held, first, that the annuity was partly a payment of capital by instalments and partly a payment of interest on the unpaid capital, and that income tax was payable only upon so much of it as represented interest on unpaid capital; and second by that in estimating in each half-yearly payment the amount on which income tax was payable, the proportion representing capital must be taken as continually increasing, and the proportion representing interest on unpaid capital as continually decreasing.

Secretary of State of India v. Scoble (72 L. J. K. B. N. S. 617; [1903] A. C. 299) applied East Indian Eailway v. Secretary of State for India, 74 L. J. K. B. N. S. 779 ; [1905] 2 K B. 413, 93 L. T. K S. 220, 54 Week. Eep. 4, 21 Times L. E. 606— C. A.

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rent,
dividends,

In computing net income for tlie purpose of the normal tax there shall be allowed as deduction » * * (seventh) the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided: — See section B infra.

Provided, further, that persons liable for a normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint stock companies or associations, and insurance companies, taxable upon their net income as hereinafter provided. — D. infra.

Derived from any kind of property, rents, interests — ^Act of June 30, 1864, Act of March 2, 1867; dividends — Act of July 1, 1862, Sec. 90; Act of June 30, 1864, Sec. 116; Act of March 3, 1865, Sec. 1; Act of March 2, 1867, Sec. 13; Act of August 28, 1894, Sec. 27.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy-holders, or depositors, a.* part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stoicl^ or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money

that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor^
-Act of June 30, 1864, § 120.

And the share of any person of the gains and profits of all companies,, whether incorporated or partnership, who would be entitled to the same if divided, whether divided or otherwise. - Act of March 2, 1867, § 13.

Except the amount of income received from institutions or corporations whose officers as required by law, withhold a per centum of the dividends^ made by such institutions, and pay tlie same to the officer authorized toi TKceive the same. - Act of March 2, 1867, § 13.

A share in profits can, by bargain, be given by a company to a person who is not a shareholder ; and, where "participating policy holders" in a life insurance company have purchased a

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share in the profits, they are persons having a right to a share in the profits, under this section.

Lastv. London Assurance Corporation (1885), L. K. 10 App. Cas. 438, 55 L. J. Q. B. IST. S. 92, 53 L. T. K S. 634, 34 Week. Eep. 233, 2 Tax Cas. 122.

"Without re-opening that subject for an inquiry into those differences, it may be said that the question whether the tax, was, in those cases (Barnes v. Eailroads and U. S. v. Eailroads), a tax on the shareholder or on the corporation, was, and is, one of form rather than substance." "[The shareholder] in any and all these cases, in point of fact ultimately suffers to that extent, or loses the amount of the tax."

MILLEE, J., in Stockdale v. Insurance Cos. 20 Wall. 323, at pp. 329, 330, 22 L. ed. 348, 350, 351 (1873), U. S. Supreme.

The amount of taxes illegally collected from the Illinois Central Railroad as income tax on dividends to non-resident alien stockholders, should be repaid to the company, instead of to the stockholders, after deducting so much as the Government may have already paid to such stockholders.

Attorney General Pierpont, 15 Ops. Atty. Gen. 67 (1875).

Dividends declared and paid during the current year become income of shareholders. It is double taxation to tax them as income of the shareholder, and again as income of the corporation.

Board of Revenue v. Montgomery Gas Light Co. 64 Ala. 269 (1874).

Semble, that under the act of July 1, 1862, a dividend declared by a corporation but not paid was taxable against the

company.

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943
(1863), U. S. C. Ct. S. Dist. K Y. Hall, J.

Under § 117 of the Act of June 30, 1864, a stockholder is not so "entitled" to undistributed profits of the corporation that he must return them as part of his income.

Ex parte Ives, 1 Int. Rev. Eec. 145, Fed. Cas. No. 7,114
(1865), U. S. Dist. Ct. D. Conn. Shipman, J.

The editor of the Internal Revenue Record comments editorially in the same issue on the foregoing decision as follows :

"If we read the opinion of Judge Shipman correctly, any number of mercantile men may organize themselves into a

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coi-porate body for the transaction of business, and term their profits dividends; and instead of distributing their earnings, may hold them for years as a corporate fund, undistributed, or pass them to the credit of stock amount. In this way stockholders might, in the course of time, become immensely wealthy, and entirely avoid the payment of income tax on this portion of their annual gains and profits; thus defeating, it seems to us, the very object and purpose of the law."

The Commissioner of Internal Revenue refused to acquiesce in Judge Shipman's ruling on the ground that the law taxed undistributed earnings as income, that the corporation was not liable to the income tax, and therefore that they must be taxed as income of the stockholder.

Euling, April 28, 1865, 1 Int. Eev. Eec. 157.

"A stock dividend is unlike a cash dividend, in that the assets of the corporation are not divided, or the property therein changed, but the stock is increased and divided, and the separate holdings of the stockholders increased to the extent of the dividend declared."

Commissioners of Sinking Fund v. Buckner, 48 Fed. 533
(1891) U. S. C. C. Ky. Babe, J.

A railroad company foreclosed a mortgage given to secure loans. Having taken title to the mortgaged premises, it issued certificates to its stockholders representing their pro rata interest in the mortgaged property. Held, that such certificates were not dividends.

Chicago, etc., E. E. v. Page, 1 Biss. 461, Fed. Cas. ISTo.
2,668 (1864), U. S. Cir. Ct. IST. Dist. 111. Davis and Dkum-

MOND, JJ.

When a corporation has actually made dividends from its profits or property without formally declaring them, by adding them to the stock of the shareholder, or where it has declared dividends and returned them, whether earned or not, the sum thus added to the stock of the shareholders, or the sum thus declared and set apart to him, becomes the measure of the tax, the legislative intent being to make the profit transferred by the corporation to its shareholders from its treasury or property the measure of taxation of its capital. Hence, it is clear that a mere nominal or arithmetical increase of the shares, without a transfer to the shareholders of anything out of the

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treasury or property of the corporation, is not a dividend or profit either made or declared. So held of watered stock.

Commonwealth v. Pittsburgh, etc. E. E. 71 Pa. 84 (1873).

A corporation issued certificates to its stockholders that

each holder was "entitled to dollars payable ratably with

the other certificates * * at the pleasure of the company out of its future earnings, with dividends thereon at the same rates and times as dividends shall be paid upon the shares of the capital stock of said company." They were transferrable on the books of the company. They were intended to be a distribution of prior earnings and to "approximate as near as possible to stock without exposing the company to the hazard of an actual addition to the same in violation of law." Held taxable as scrip dividends.

Bailey v. Railroad Co. 22 Wall. 604, 22 L. ed. 840 (1874), U. S. Supreme, Clifford, J.

It is competent for the company to show by collateral evidence what portion of earnings distributed by means of the certificates was earned during the period covered by the income, and what portion was earned prior thereto. A declaration of dividends is not conclusive proof that they were earned within the period covered by the tax.

Bailey v. Railroad Co. (second appeal), 106 U. S. 109, 27 L. ed. 81, 1 Sup. Ct. Rep. 62 (1882), Matthews, J.

"The law conclusively assumes * * that a dividend declared is a dividend earned." Semble. Ibid.

As between life-tenant and remainderman, stock dividends constitute increase of capital, not income.

Gibbons v. Mahon, 136 U. S. 549, 34 L. ed. 525, 10 Sup. Ct.

Eep. 1057 (1889), Geat, J.

"[In Bailey v. Eailroad Co. 22 Wall. 604, 22 L. ed. 840,] the question at issue was not between the owners of successive interests in particular shares, but between the corporation and the government, and depended upon the terms of a statute carefully framed to prevent corporations from evading payment of the tax upon their earnings." Ibid, at p. 560.

A corporation began with a capital of \$100,000, which was increased to \$1,000,000 out of its profits, the increase being invested in improvements and enlargement of its business. Held, that \$900,000 increase was taxable as dividends.

Lehigh, etc. v. Commonwealth, 55 Pa. 448 (1867).

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When a contract is made witli certain trustees to build a railroad and divide the profits among the stockholders of a certain corporation, which guarantees the trustees against loss, and agrees to advance funds and receive a commission, held that the profits received by the trustees and distributed among the stockholders are not taxable as dividends of the corporation.

Credit Mobilier v. Commonwealth, 67 Pa. 233 (1870).

The relator invested surplus profits in real estate and gas mains, and issued certificates to the shareholders to the effect that they had a ratable interest therein. Held, that such invested profits were property of the corporation, and taxable as such.

People ex rel. Gas Co. v. Assessors, 76 JST. Y. 202 (1879).

Proof that capital stock has been increased is not even prima facie evidence that such increase is a stock dividend or a division of actual profits.

Commonwealth v. Erie, etc. E. E. 74 Pa. 94 (1873).

The whole assets of a bridge company having been taken by the state in condemnation proceedings, and the compensation having been divided among the stockholders ratably, held, that the surplus over the capital stock was taxable as dividends.

Matson Bridge Co. v. Commonwealth, 117 Pa. 265, 11 Atl. 813 (1888).

The acts of Congress distinguished interests to depositors from dividends to thcM. Held, on the facts, that certain pay-Taents were made as dividends and not as interest.

Cary v. San Francisco Savings Union, 22 Wall. 38, 22 L. -ed. 779 (1874), TJ. S. Supreme, Waite, C. J. better reported

in 21 Int. Eev. Eec. 84.

Cary v. Savings and Loan Society, 154 U. S. 615, and 22 L. ed. 780, 14 Sup. Ct. Eep. 1207 (1875), Waite, C. J., reversing San Francisco Savings and Loan Society v. Cary, 17 Int. Eev. Eec. 109, Ped. Cas. ISTo. 12,317 (1873), U. S. Cir. 'Ct. Dist. Cal. Sawyee, J.

When the profits of a bank are applied in payment of its stock, such payments are dividends, and taxable as such.

State V. Farmers' Bank, 11 Ohio, 94 (1841).

In construing a State statute, a tax on capital stock measured by dividends was held not a tax on dividends.

Phoenix Iron Co. v. Commonwealth, 59 Pa. 104 (1868).

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Under the Act of June 30, 1864, the tax was collectible on the interest of a stockholder in the profits of a corporation not included in dividends but invested partly in real estate, partly in machinery and raw materials, and partly in the payment of debts incurred in previous years.

Collector v. Hubbard, 12 Wall. 1, 20 L. ed. 272 (1870), U. S. Supreme, Cliffoed, J.

When a corporation declares a dividend payable in gold, the tax upon such dividends must be paid in gold or its equivalent in currency.

Euling, 2 Int. Eev. Eec. 100.

There is no tax on the mere doubling of the shares of a corporation when no more property is represented by the additional number of shares than before the addition was made. On an increase, where the new shares represent the gains of the company made during the year and added to the capital, a tax should be assessed.

Ruling, 1 Int. Eev. Eec. 188.

Where a stock dividend is in reality a division of the accumulated earnings of several years, so much of the amount as is clearly shown to the assessor to be due to the profits of previous years may be omitted from the return. Such stock, should be returned at its par value if it remain unsold ; otherwise at its actual value.

Euling, 1 Int. Eev. Eec. 155.

The profits acquired by the winding up of a corporation, and the division of its assets, are taxable as income.

Euling, 2 Int. Eev. Eec. 138.

Although §§ 120 and 122 of the Act of June 30, 1864, clearly contemplate that the Government shall receive five per cent, of the whole amount paid out by any of the companies- enumerated on account of dividends or interest upon bonds, it has been contended by some companies that as they were- merely authorized and not required to withhold the tax from such dividends or interest, it was competent for them to pay the tax, and charge the same to their expense account, and make the payment to the stockholder or bondholder free of tax. The result of this construction is to give the Government five' dollars for every one hundred dollars paid to the stockholder,, instead of five dollars for every ninety-five dollars thus paid.

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When the company adopts that construction, the deduction provided for in the 116th and 117th sections, should not be allowed.

Kuling, 1 Int. Eev. Kec. 116.

Whenever a stockholder makes his income return under § 116, he should return as his income from dividends, not only the \$95 from \$100 paid to him by the company, but also the \$5 paid for him to the Government.

For example:

A's dividend or share of the profits in a railroad company is \$4,000. Of that sum the company withholds and pays into the Government five per cent., that is \$200, the remaining \$3,800 is paid to A. In addition to income from dividends, he has an income of \$800 from other sources. From this he is entitled to deduct \$600, leaving \$200 as taxable income from other sources. To this add the \$3,800 received directly from the company, and he has a taxable income of \$4,000. Five per cent, upon that sum is \$200. From this deduct the \$200 withheld by the company and nothing remains. The Government has received no tax whatever from the \$200 taxable income from other sources.

Euling, 2 Int. Eev. Eec. 100.

securities,

There shall be included all income derived from interest upon notes, bonds, and other securities. - Act of August 28, 1894, § 28.

Interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest. - § 28, post, p. 287.

There shall be included all income derived from interest upon notes,

bonds and other securities of the United States. — Act of March 2, 1867.
§ 13.

There shall be included all income derived from any kind of property,
rents, interest received or accrued upon all notes, bonds, and mortgages.
—Act of July 14, 1870, § 7.

or the transaction of any lawful business carried on for gain or profit.
Gains derived from, and losses incurred by, the sale of stocks,
are regarded as gains and losses in business without reference
to the time during which the stocks are held. Interest in
dividends derived from stocks is regarded as income derived
from fixed investments, without reference to the time during
which such stocks are held ; but when gains derived from sales

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of stocks involve interest received or accrued, such gains may
be regarded as derived from business alone. Salaries, except
when specially provided for by statute, are regarded as income
from business. . The value of property used in business, less
the amount of insurance, may be deducted when lost from the
gains and profits in business.
Euling, 3 Int. Eev. Eec. 188.

or gains or profits and income derived from any source whatever,
All other gains, profits, and income derived from any source whatever. —

Act of August 28, 1894, § 28.

All other gains, profits, and income derived from any source whatever. —

Act of March 2, 1867, § 13.

All other gains, profits, and income drawn from any source whatever. —

Act of July 14, 1870, § 7.

Eent saved by reason of the fact that a person occupies a
house rent-free is not taxable.

Tennant v. Smith [1892], A. C. 150, H. L.

Profits realized during the year are to be returned and as-
sessed without regard to the fact that they had been produced
by the labors of previous years.

Euling, 2 Int. Eev. Eec. 44.

Wages of a minor son, if the parent has power to control the
same, must be included with the income of the parent, and
taxed as such.

Euling, 1 Int. Eev. Eec. 156.

S. was a partner in business with F. His share of the profits was about \$5,000. The firm dissolved, and S. gave E. the amount of his profits in payment for F.'s share in the good will of the firm. Held, that S. should pay an income tax on \$5,000, although that was reinvested in the business, and that F. should also pay an income tax on \$5,000.

Euling, 4 Int. Eev. Eec. 46.

When a vendor consents to receive the purchase price in annual installments, such installments are not taxable as "annual payments." They are principal and not income.

Foley V. Fletcher, 3 Hurlst. & JST. 769 (1858), Exch,

including the income from but not the value of property acquired by gift, bequest, devise, or descent:

Money and the value of all personal property acquired by gift or inheritance. — Act of August 24, 1894, § 28.

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Gifts of personal property made ante mortem as advances since the passage of the revenue laws, should be treated as income.

Ruling, 3 Int. Eev. Rec. 133.

The value of an annuity to arise from a fixed principal should be estimated by assuming the rate of interest upon money at 6 per cent without reference to the legalized rate of any particular state.

Ruling, 4 Int. Rev. Rec. 47.

A gift is not taxable as an "annual profit or gain arising from any kind of property" or "from any profession, trade, employment, or vocation." 80 held of an allowance to a curate "in recognition of faithful service," renewable at the discretion of a committee and conditional upon his collecting half the amount as donations to the fund.

Turner v. Cuxon, L. R. 22 Q. B. Div. 150 (1888), Cole-

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An annual gift by parishioners to their clergyman held, a payment in respect of his office, and so taxable as income.

Inland Revenue v. Strang, 15 Scot. L. R. 704 (1878) ; Sc. Ct. Sess. Outer House, Ld. Cleeiehill.

Amounts paid to clerks of banks, etc., as gifts, are clearly paid with reference to services rendered, and should be taxed

as income.

Ruling, 7 Int. Rev. Rec. 35.

All gifts which are in the nature of compensation for services rendered, whether made in accordance with a previous understanding or with an annual custom, are taxable as income.

Ruling, 1 Int. Rev. Rec. 150.

Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract or upon surrender of contract, shall not be included as income.

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business.

When any person rents buildings, lands, or other property, or hires

labor to carry on [cultivate - Act of March 3, 1865] lands, or to conduct

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any other business from which such income is actually deriyed, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted. - Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

Also the amount paid out for usual or ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted.^Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

The amount actually paid for labor or interest by any person who rents land or hires labor to cultivate land, or who conducts any other business from which income is actually derived. - Act of March 2, 1867, § 13.

The amount paid out for usual or [and - ^Act of July 14, 1870] ordinary repairs. - Acts of March 2, 1867, § 13 ; Act of July 14, 1870, § 9.

The amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived. - Act of July 14, 1870, § 9.

In computing income? the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted. - ^Act of August 28, 1894, § 28.

Strong & Co. v. Woodifield, [1906] A. C. 448, 5 Tax Cas. 215, [1906] Per Lord Davey, p. 453: "It is not enough that the disbursement is made in the course of, or is connected with, the trade, or is made out of the profits of the trade. It must be made for the purpose of earning the profits."

A rubber company, of "whose estate only a portion was as yet producing rubber, claimed to deduct the expenses incurred annually in weeding, watching, etc., those portions of the estate where the trees had not yet reached the rubber-bearing age: — Held, that the expenses were deductible, and that the fact that they were incurred to earn profit in future years, and were not referable to profits earned in the year in which they were incurred, did not prevent them from being proper deductions; and that, as they were annually recurring expenses, they were prima facie not capital expenditure, but income expenditure:

Vallambrosa Eubber Co. v. Farmer [1910] S. C. 519, 47 Scotch L. E. 488, 5 Tax. Cas. 529.

Subscriptions to Coal Owners Association. — A colliery company were members of a coal owners association, to which they paid a subscription. The object of the association was to indemnify its members in the event of deficiency or stoppage of output caused by strikes, etc. : — Held, that the subscription was not money laid out for the purposes of the trade, and could not be deducted:

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Ehymney Iron Co. v. Fowler, [1896] 2 Q. B. 79, 65 L. J. Q. B. N. S. 524, 44 Week. Kep. 651, 3 Tax Cas. 476.

A brewery company, upon being assessed under Schedule D of the Income Tax Act, 1853, in respect of the profits of their trade, claimed to deduct from the amount of those profits the sum expended by them as landlords of certain "tied" houses in respect of the proportion of the compensation levy imposed upon them by Section 3 of the Licensing Act 1904. The tied houses were owned by the company and were let to tenants upon the terms that the tenants should only deal with the company in the way of their business, and should buy all the beer consumed on the premises from the company, the tenants paying a lower rent in consideration therefor. It was found as a fact that the profits of the company were greatly increased by the employment of the houses, and that they were necessary in order to enable the company to carry on their business profitably: Held (the House of Lords being equally divided in opinion on the question), that the respondents were entitled to the deduction claimed.

Smith V. Lion Brewery Co., 80 L. J. K. B. IST. S. 566, [1911] A. C. 150, 104 L. T. N. S. 321, 75 J. P. 273, 55 S. J. 269 ; 37 L. J. E. 261, 5 Tax Cas. 568, H. L. (E).

S. & L. a firm of tube manufacturers, entered into an agreement with W., another firm of tube manufacturers whereby in return for the right to nominate a majority of the directors of W., S. & L. undertook to pay to W. each half year such sum as might be necessary to make up any deficit in the dividend on W.'s preference shares. In pursuance of this agreement, in

the year 1904 S. & L. made payments to W. of sums amounting to £841. In estimating their profits for that year for income tax purposes, S. & L. claimed to deduct from the profits this sum of £841. The Income Tax Commissioners held that S. & L. had expended this sum for the purposes of their trade and that they might sell their goods at a better price, and allowed the deduction : Held; , that the deduction had been rightly allowed.

Moore v. Stewarts and Lloyds, 8 F. 1129, Ct. of Sess.

A corporation required by law first to supply a town with gas was permitted thereafter to supply private consumers with gas. It received [so far as the report shows] no compensation

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from the town, but the receipts from private consumers produced a profit on the whole enterprise. Held, that the expense of lighting the town could not be deducted. Such expense is not for the purpose of the business ; it is merely to enable the corporation to enter upon the business.

Dillon V. Corporation of Haverfordwest, [1891] 1 Q. B. 575.

When a lessee pays a large premium at the beginning of his term for the lease, such payment is not to be regarded as rent, paid in advance. He is not, therefore, entitled to deduct an aliquot part of such premium as an annual expense. He may^ however, deduct the fair rental value, if it is greater than the rent actually paid.

Gillatt V. Colquhoun, 33 Week. Eep. 258 (1885), Q. B. D.

Under the terms of section 117 of the Act of June 30, 1864, the salary of a person employed to take care of real estate would be deductible from such income of the persons paying the salary as is derived from the estate in question. The person receiving the salary should return the same as part of his income subject to tax.

Kuling, 3 Int. Eev. Eec. 102.

Expenses of collection, necessarily incurred, may be deducted from rents.

Stevens v. Bishop, L. E. 20 Q. B. Div. 442 [1888].

[Distinguished in the Duke of Norfolk v. Lamarque, on account of the words in italics.]

Expenses of collection are not to be deducted from rents.

Duke of Norfolk v. Lamarque, L. R. 24 Q. B. Div. 485 [1890].

"No analogy whatever can be drawn from the profits of manufactures or mercantile business, because there the word 'profits' necessarily means that which is earned after a certain outlay made for the purpose of earning it, and it cannot be said that expenditure in the collection of rent is money spent for the purpose of earning the rent - it is simply money spent for getting in that which belongs to the owner." Ibid., Pollock, B., at p. 490.

Legal expenses arising from ordinary business may be deducted as expenses of the business.

Euling, 7 Int. Eev. Eec. 59.

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Wages paid for productive labor, i. e. labor in the manufacture of article, for sale, may be deducted, but not wages paid for unproductive labor.

Euling, T Int Rev. Kec. 58.

Where a party owns unimproved property from which no income is derived, expenses, repairs, insurance, interest, etc., are deducted from whatever income has accrued to him; but the expense of hired labor can be deducted from profits of only such business as employed in the labor.

Euling, 1 Int. Eev. Kec. 154.

Wages of his minor children are not deductible from the income of a farmer; but the wages of adult children are.

Euling, 7 Int. Eev. Eec. 58.

A bank is entitled to deduct as an expense of its business the rental value of premises occupied by it, although a part of such premises are occupied by its officials rent free.

Eusse V. Town, etc., Bank, L. E. 13 App. Cas. 418 [1888], H. L.

Voluntary contributions by a minister towards the stipend of his assistant minister, were held not to be allowable deductions under § 52 of the Income Tax Act, 1853, not being expenses necessarily incurred in the personal performance of his duty.

Lothian v. Macrae [1884], 12 E. 336, 22 Scot. L. E. 219, 2 Tax Cas. 65.

Eoyalties for use of Patent - The Finance Act, 1907, § 25 (1), provides that: "In estimating, under any Schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profes-

sion, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorized, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due." The appellant company were assessed for the year 1907-8 on the average of their profits for the three years ended September 30th, 1906. During each of the three years they had paid royalties for the user of patents, but these payments ceased on January 1st,

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1907, a date prior to the operation of the Finance Act, 1907. In arriving at the assessment for the year 1907-8, the royalties paid in the years of average v^ere disallowed as a deduction, the disallowance being based on § 25 (1) of the Finance Act, 1907 : - Seld, by the Court of Appeal, that § 25 of the Finance Act, 1907, must be read as a whole, and that as it was not a charging section, but a section for improving the machinery of collection, it did not operate to prohibit the deduction of royalties when the person assessed was debarred from reimbursing himself in the manner contemplated by the section. The prohibition to deduct was dependent on the existence of facilities for recoupment.

Lanston Monotype Corporation v. Anderson, [1911] 2 K. B. 1019, 80 L. J. K. B. K S. 1351, 105 L. T. K S. 398, 5 Tax Cas. 675.

A payment of capital invested in a business cannot be deducted.

City of London Contract Co. v. Styles, 4 Times L. E. 51 [1887], Ct. App., affirming s. c. 3 Times L. R. 512 [1887].

A railway company claimed as deductions, (1) a sum expended upon the improvement of the permanent way of one section in order to bring it up to the standard of the main line ; and (2) a sum representing the cost of the extra weight in relaying another portion of the line with steel in place of iron rails, and with chairs of additional weight. In the books of the company these sums were charged against capital: - Held, that the sums in question were properly charged against capital, and were not allowable deductions.

Highland Eail. Co. v. Balderston [1889], 26 Scot. L. E. 657, 2 Tax Cas. 485.

The appellant company carried on the business of zinc smelting, for which purpose large quantities of blende were required. To supplement their own supply, a new company was formed for acquiring and working, in the interests of the appellant company, certain mines containing blende. Practically all the shares of the new company were owned by the appellant com-

pany. From time to time the appellant company made advances to the new company by way of loan at interest, for the purpose of working these mines, the more recent advances being

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alleged to be made as against blende to be delivered. A certain quantity of blende was delivered, but, after giving credit in respect thereof, there remained a balance due to the appellant company. The new company subsequently went into liquidation, and the appellant company lost the whole of this balance. In estimating the amount of the profits from their business for assessment, the appellant company claimed to deduct this balance as being a bad debt: Held, that the advances were an investment in a separate concern and a capital expenditure, and not money laid out exclusively for the purpose of the trade, or advanced against specific parcels of goods to be delivered, and accordingly, that the deduction claimed was not allowable.

English Crown Spelter Co. v. Baker [1908], 99 L. T. K S. 353, 5 Tax Cas. 327.

Expenses of Applications for New Licenses. — A company of brewers expended certain sums for law costs, printing, and advertising, etc., in connection with applications made by them to the licensing justices for the grant of new and additional licenses to houses owned and leased by them, and also to houses not owned by them, but for which they conducted the applications for the purpose of maintaining and increasing their trade. Payments were also made to owners of public houses for the right to call for a surrender of the licenses attached to such houses, if required by the licensing justices to be surrendered before the grant of new licenses for new houses. Where the applications were successful, the expenses were added to the cost of the new houses. The company claimed, in computing their profits, to deduct the sums paid as above in cases where the applications for new licenses were unsuccessful, as a necessary annual trade expense: Held, that the sums in question were expended on account of capital, and were not an allowable deduction.

Southwell V. Savill Brothers, [1901] 2 K. B. 349, 70 L. J K. B. E". S. 815, 85 L. T. IST. S. 167, 49 Week. Eep. 682, 4 Tax Cas. 430.

Expenses of Eemoval. — A company, which carried on. the business of buying and selling granite, moved their business premises, and defrayed the whole cost out of income.

In calculating their profits for assessment under Sched. Foster Income Tax. — 38.

(D.), the company claimed to deduct the cost of carting their granite from the old premises to the new, and of taking down and re-erecting two cranes : Held, that they were not entitled to do so. Per Lord President, 8 F. p. 56: "Supposing these parties had not had a crane, and in fitting up their new yard had found it necessary to buy one, its cost is not a deduction which would have been allowed." Per Lord McLaren (p. 57) : "The cost of transferring plant from one set of premises to other and more commodious premises is not an expense incurred for the year in which the thing is done, but for the general interests of the business. * * * Suppose a person is so imprudent as not to insure his business premises, . . . and that they are destroyed by fire, and he has to replace them, he would not be allowed to charge the reinstatement against the income of the year."

Granite Supply Association v. Kitton [1905], 8 F. 55, 4»
Scotch L. E. 65, 5 Tax Gas. 168.

Consideration for Transfer of Business, etc. — Part of the business taken over by a company consisted of unexecuted contracts, and guaranteed interest was paid to the shareholders of other companies, without deducting income tax, during the construction of works contracted for : Held, that the price paid for such contracts was not a deduction from the profits, and per Lord EsHER, M. K., that the interest was also not a deduction.

City of London Contract Corporation v. Styles [1887], 4
Times L. E. 51, 2 Tax Cas. 239.

Held, that no deduction was allowable on account of the consideration paid to another Mexican bank for the transfer of certain concessions involving the right of issuing bank notes.

London Bank of Mexico and South America v. Apthorpe
[1891] 2 Q. B. 378, 60 L. J. Q. B. K S. 653, 65 L. T. K S.
601, 39 Week. Eep. 564, 3 Tax Cas. 143.

The Eoyal Insurance Company acquired the business of the Queen Insurance Company, it being agreed that the manager of the latter should be taken into the service of the former, with liberty for the Eoyal Insurance Company to commute his salary by payment to the management of a gross sum. Shortly after the transfer, the Eoyal Insurance Company paid the manager a sum in commutation of his salary : Held, that the payment formed part of the consideration for the transfer of the

business, and being capital expenditure, could not be deducted in ascertaining the profits. Per Lord Halsbuey, L. C. [1897] ^

A. C. p. 7 : "Under these circumstances, it appears to me that this comes within the express language of the statute; it is capital expenditure - it is part of the purchase-money for the concern. It is perfectly immaterial whether it was entirely so or partly so, because if it was partly so it is enough to establish the proposition which I am maintaining."

Eoyal Insurance Co. v. Watson [1897] A. C. 1, 66 L. J. Q.

B.]Sr. S. 1, 75 L. T.]Sr. S. 334, 3 Tax Cas. 500.

Sinking Fund. - The appellants were empowered under their private Act to raise money upon mortgage of the undertaking, for the purpose of carrying out a Government contract, and were required to establish a sinking fund for the extinction of the mortgage debt. A sum was to be set aside into the sinking fund out of each quarterly payment received under the contract or out of other moneys belonging to the company : - Held, following *Mersey Docks v. Lucas* [1883], L. E. 8 App. Cas. 891, that the sums thus set aside were not allowable as a deduction in arriving at the company's assessable profits.

■ *City of Dublin Steam Packet Co. v. O'Brien* [1912], 6 Tax Cas. 101.

-A steamship owned by a steamship company, and valued at £37,000, was insured with underwriters at £34,500, the company taking the risk of loss to the amount of £2,500. The company transferred from revenue account to their insurance fund, out of annual profits, a sum equivalent to the amount of premium that would have been payable to an underwriter on a risk of £2,500. The steamship was wrecked and became a total loss, and the company recovered the sum of £34,500 from the underwriters. The company claimed, in ascertaining their profits, to deduct the said sum of £2,500 (less the amount received as salvage) as being the amount of the risk undertaken by them, and transferred from their insurance fund to capital account : - Held, that the company were not entitled to make the deduction in question, the loss being a loss of capital. Per Lord MacLaren, 44 Sc. L. E., p. 717 : "This is not marine insurance in the legal sense of the term, because there is no contract of insurance, but only a reservation of a sum out of the profits of the business to provide for future losses :"

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Inland Revenue v. Western Steamship Co. [1907], S. C. 1005; 44 Scot. L. E. 715.

Where under a policy of life insurance and an agreement between the parties thereto, the insured has paid only one-half of the premium in cash and the other half by means of a loan from the insurer repayable on demand and bearing interest (the principal and interest being charged upon the policy), he is only entitled under section 54 of the British Income Tax Act, 1853,

to deduct the amount paid by him in cash in respect of premium from his assessable income (Lord James of Heeefoed dissenting).

Hunter v. Atty.-Gen., 73 L. J. K. B. K S. 381 ; [1904] A. C. 161; 90 L. T. N. S. 325, 52 Week. Rep. 593, 20 Times L. R. 370- H. L. (E.)

By a policy of assurance, known as a double endowment assurance policy, the insurance company, in consideration of the payment of annual premiums by the assured, agreed to pay 1001. to his legal personal representatives if he died before a specified date, and to pay 2001. to the assured himself if he were alive on that date : - Held, that this was an "insurance on his life" within the meaning of Section 54 of the Income Tax Act, 1853, and that, consequently, the assured was entitled to deduct the whole amount of the premiums from his profits and gains in respect of which he was liable to be assessed to the income tax under Schedule D.

Gould V. Curtis, 81 L. J. K. B. W. S. 634 [1912] 1 K. B. 635, 106 L. T. K S. 680, 28 Times L. R. 274- Hamilton, J.

not including personal, living, or family expenses;

That in estimating the annual gains, profit, or income, of any person, under the act to which this act is an amendment [Act of July 1, 1862], the amount actually paid by such person for the rent of the dwelling-house or estate on which he resides shall be first deducted from the gains, profit, or income of such person. - Act of March 3, 1863, § 11.

Also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person, or by his family, in his own right or in the right of his wife, shall not be included and assessed as part of the income of such person. - Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

Except the rental value of any homestead used or occupied by any person or by his family in his own right, or in the right of his wife. - ^Act of March 2, 1867, § 13.

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The amount actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family. - ^Act of March 2, 1867, § 13.

Not including the rental value of the homestead used or occupied by

any person, or by his family. — Act of July 14, 1870, § 7.

The amount paid for rent of the house or premises occupied as a residence for himself or his family. — Act of July 14, 1870, § 9.

If a taxpayer rents his own house and is subjected to pay rent elsewhere on account thereof, he must return the rent received, and will be allowed to deduct the amount of rent paid.

Euling, 4 Int. Eev. Eec. 46.

When a taxpayer owns a homestead the rental value of which is not returned as income, he should not be allowed to deduct the amount paid by him for the rent of the house or premises occupied as a residence for himself and his family elsewhere.

Euling[^] 5 Int. Eev. Eec. 154.

When a tax-payer rents a furnished house, rent for the furniture should not be deducted.

Euling, 7 Int. Eev. Eec. 59.

A lady made a profit by letting her furnished house for two months, and when assessed for income tax thereon, claimed to deduct the rent of another house which she had taken to reside in during that period : — Held, that this rent was not an expense necessarily incurred in earning the profit, and accordingly that, the deduction should be disallowed.

Wylie V. Eccott, Ct. Sess. S. C. 16 (1913).

A schoolmaster and his wife, the schoolmistress, were paid a joint salary, in respect of which the husband was assessed under Sched. (E.), and he claimed, under § 51 of the Income-Tax Act, 1853, to deduct the wages and cost of maintenance of a domestic servant, whose employment was necessary in order that the duties of his household might be carried on while his wife was engaged in the school : — Held, that the deduction could not be claimed:

Bowers v. Harding, 1 Q. B. 560, 60 L. J. Q. B. K S. 474, 64 L. T. N". S. 201, 39 Week. Eep. 558, 3 Tax Cas. 22 [1891],'

It was held that under section 52 of the Income Tax Act. 1853, a minister was entitled to deduct from his stipend (1) hia-

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expenses of visiting members of his congregation; (2) expenses of attending church meetings where part of his duty was enjoined on him by his superiors; (3) stationery; (4) communion expenses. He was not entitled, however, to make any deduction

in respect of that part of his dwelling-house which was used as an office for the business of his profession, or for the expense of books.

Charlton v. Commissioners of Inland Revenue [1890], 17 R. 785, 27 Scotch L. R. 647.

Minister's Expenses. — Keeping Horse and Carriage, etc. — A parish minister claimed repayment of income tax under § 52 of the Income Tax Act, 1853, in respect of (1) the cost of keeping a horse and carriage ; (2) expenses incurred in obtaining an augmentation of stipend; (3) outlays for pulpit supply during holidays; and (4) an allowance granted by the Court of Teinds for communion elements. The commissioners allowed the first and last, but disallowed the others. On appeal, the court upheld the decision of the commissioners, holding that (1) and (4) were questions of fact which the statute laid on the commissioners to decide, and that the others were not expenses necessarily incurred solely in the personal performance of his duty.

Jarding v. Gillespie [1907], S. C. 77, 44 Scotch L. R. 136, 5 Tax Cas. 263.

The expense of season tickets on railways held by persons living out of town, who do business there, going by the morning and returning by the evening train, can be deducted from income, so far as the assessor shall consider such expenses as properly chargeable to expenses of business.

Ruling, 1 Int. Rev. Rec. 172.

Expenses of conveyance in the prosecution of business, but not hotel bills or other expenses of living, are to be deducted as the expenses of the business.

Ruling, 7 Int. Rev. Rec. 60.

Traveling expenses of directors from their residences to the office of their company were held to be inadmissible deduction.

Revell V. Directors of Elworthy Brothers & Co. (1890) 3 Tax Cas. 12.

Traveling Expenses. — A solicitor resided and carried on his profession at Worcester; he was also clerk to the justices at Bromyard, and consequently had to travel frequently between

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those two places : — Held that he was not entitled to deduct from the emoluments of his office such traveling expenses:

Cook V. Knott [1887], 4 Times L. K. 164, 2 Tax Cas. 246.

Contribution to Thrift Fund. — Under powers conferred by

Act of Parliament, a municipal corporation established a scheme for a thrift fund for the benefit of their officers. Under the scheme, persons entering the service of the corporation after a certain date were to contribute,, and the corporation might deduct a certain part of their salaries. The moneys so contributed were held upon certain trusts in the contributors' favour. Persons in the service on the date in question, might on their own application, be admitted to the benefit of the fund upon the same terms, but no persons so admitted were to cease to contribute while in such service. A person in the service on the date in question, applied to be admitted to the benefits of the fund, and another person who had entered the service after the date in question subsequently made payments to the fund under the scheme : - Held, that the payments were not "sums payable or chargeable by virtue of any Act of Parliament," or sums "really and bona fide paid and borne by the party to be charged," within § 146, Sched. (E), r. 1, and accordingly could not be deducted from the amounts of the salaries for the purpose of assessment under Sched. (E) :

Beaumont v. Bowers, [1900] 2 Q. B. 204, disapproved; Hudson v. Gribble, Bell v. Gribble, [1903] 1 K. B. 517, 72 L. J. K. B. K S. 242, 88 L. T. Ist. S. 186, 51 Week. Rep. 457, 4 Tax Cas. 522.

The amount deducted from the salary of a clerk to the guardians of a union, etc., as a contribution for superannuation allowance under the Poor Law Officers' Superannuation Act, 1896 (59 & 60 Vict. c. 50), was held to be deductible from his Sched. (E) assessment, as falling within the words "sums payable or chargeable by virtue of any Act of Parliament" in § 146, r. 1:

Beaumont v. Bowers, [1900] 2 Q. B. 204, 69 L. J. Q. B. N". S. 600, 48 Week. Eep. 557, 4 Tax Cas. 189. This case was disapproved in Hudson v. Gribble and Bell v. Gribble, supra.

second, all interest paid within the year by a taxable person on indebtedness ;

And also all interest due or paid within the year by such person on

existing indebtedness. - ^Act of August 28, 1894, Sec. 28.

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A financial and investment company obtained from bankers in New York sums on loans for periods not exceeding six months in order to pay for its securities purchased by it. In stating its profits for the purpose of income tax, the company claimed to deduct the interest paid on these loans, but the commissioners, being of opinion that these sums were utilized as additional capital, disallowed the deduction: Held, that the sums borrowed could not b^ regarded as capital, and that the interest fell to be deducted in arriving at the assessable profits.

Alexandria Water Co. v. Musgrave (52 L. J. Q. B. N. S. 349, 11 L. E. Q. B. Div. 174), distinguished.

Anglo-Continental Guano Works v. Bell (70 L. T. N. S. 670), doubted.

Scottish North American Trust v. Inland Revenue [1910] S. C. 966, Ct. of Sess.

A company carrying on a financial and banking business at home and abroad borrowed money from its foreign bankers, by whom it was allowed a large overdraft, and paid interest on the amount so borrowed, and also from time to time on the amount of the overdraft : Held, that in assessing for income tax the profits and gains of its business, the company was entitled to deduct the amount of interest paid to the bankers on the loan and the periodical amount of the overdraft.

Farmer v. Scottish North American Trust, Lim. 81 L. J. P. O. N. S..81 [1912] A. C. 118, 105 L. T. N. S. 833, 28 Times L. R. 142, 5 Tax Cas. 693, H. L. (Sc).

Where a burial board make profits, they are entitled to deduct from the total receipts the expense of earning them, or what may be called the working expenses, but not the interest upon money borrowed.

Portobello Town Council v. Sulley (1890), 27 Scot. L. E. 863, 2 Tax Cas. 647.

An English company carrying on business at Alexandria, where their works and property were, paid debenture interest to their debenture holders residing in Egypt: - Held, not an allowable deduction in ascertaining the amount of the company's profits for assessment.

Alexandria Water Co. v. Musgrave (1883), L. R. 11 Q. B. Div. 174, 52 L. J. Q. B. N. S.^ 349, 49 L. T. N. S. 287, 32 Week. Rep. 146, 1 Tax Cas. 521.

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Per Lord Halsbuey, L. C. [1892] A. O. p. 315 : "With the decision in that case I am not disposed to disagree, though I am not quite certain I am able to adopt the reasoning . . . but upon the facts, I think I should have come to the same conclusion, since, to put it very plainly, in that case it was a claim to deduct the company's debts for borrowed capital and diminish the amount of the profits of the trading.'" Per Lord Heeschell (p. 325) : "It is by no means clear that the case was not within the prohibition of the third rule." See also Lord Watson (p. 320).

Gresham Life Assurance Society v. Styles [1892] A. C. 809 ; 62 L. J. Q. B. N. S. 41, 67 L. T. N. S. 479, 41 Week.

Eep. 270, 3 Tax Cas. 185.

See also Clerical, Medical and General Life Assurance Society V. Carter (1889), L. K. 22 Q. B. Div. 444, 58 L. J. Q. B.]Sr. S. 224, 2 Tax Cas. 437. Per Lord Eshee, L. E. 22 Q. B. Div. p. 449 : "I think that the 52nd section ought to be so construed as to prevent the suggested hardship, and that interest of money ought not first to be taxed as a separate subject-matter of taxation and then brought again into account in arriving at the profits and gains."

The case of Mersey Loan and Discount Co. v. Wootton (1887), 4 Times L. K. 164, 2 Tax Cas. 316, where it was decided that a company paying compound interest at 5 per cent. to its depositors on the varying amounts standing to their credit at one or more week's notice of withdrawal, was not entitled to deduct such interest in ascertaining the amount of its profits for assessment, because it was "payable out of profits and gains," is now overruled.

Gresham Life Assurance Society v. Styles [1892] A. C. 309, supra.

A banking company, which had its head office in Australia, and carried on a banking business at a branch office in London, paid interest on its interminable stock to certain holders of such stock in the United Kingdom. In ascertaining the amount of the profits of the branch in the United Kingdom, assessable under Sched. (D.), the bank claimed a deduction in respect of the interest so paid : - Held, per Channell, J., in the King's Bench Division, that the deduction was not allowable.

Queensland National Bank v. Thrift (1909), unreported.

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A foreign company had a central office at Hamburg and a branch house in London, the latter being carried on as a separate business, with a separate capital. To enable the London house to buy goods more advantageously for cash, instead of on credit at a higher price, the London house obtained short loans from the central office and from bankers abroad, and paid interest thereon. It was admitted that the interest on the advances from the central office was not a deduction in ascertaining the profits of the London branch: - Held, that the interest on the short loans from the bankers was also not an admissible deduction.

Anglo-Continental Guano Works v. Bell (1894), 70 L. T.]Sr. S. 670, 58 J. P. 383, 3 Tax Cas. 239.

This case was distinguished in Farmer v. Scottish Worth American Trust, Limited [1912] A. C. 118, 81 L. J. P. C.]Sr. S. 81, 105 L. T. N. S. 833, 5 Tax Cas. 693, set out infra.

See also *City of London Contract Corporation v. Styles* (1887), 4 Times L. R. 51, 2 Tax Cas. 239, referred to ante.

A financial and investment company carrying on an investment business, was empowered by its memorandum of association to borrow and raise money by way of loan, overdraft, etc. The company purchased, in the course of its business, bonds, stocks, and other securities in New York. As the value of these purchases exceeded the amount of the company's available cash, the company pledged to their bankers in New York, certain of their securities lying there, and thereupon the bankers allowed the company to overdraw their banking account. The overdraft fluctuated from time to time as securities were bought and sold by the company, and the bankers charged the company periodic interest thereon at current rates from day to day. In 1906, the company opened a loan account with their bankers, in addition to the ordinary overdraft, on which the bankers granted a loan not exceeding \$200,000, for a period of six months at 6 per cent. When this loan fell due, it was renewed for a further six months, after which the loan account was terminated and the balance transferred to current account. The bankers collected all the dividends and coupons upon the securities in their hands, paying the interest due to themselves out of the sums so collected, the difference or net amount being credited to the company. In the event of the dividends and

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coupons collected not equalling the amount of the interest payable in any month, the interest was debited to the overdraft on the current account. The company, in ascertaining the amount of their profits for assessment, claimed to deduct the amount of interest paid to their bankers, but on appeal to the general commissioners the deduction was disallowed, on the ground that the interest was interest on capital: — Held, by the House of Lords, that the deduction in question was admissible, as the money borrowed could not be regarded as "capital" within the meaning of the Income Tax Acts; and the interest paid was expenditure by means of which the company procured the use of the thing by which they made a profit, and, like any similar outgoing, should be deducted from the receipts to ascertain the taxable profits and gains earned by the company (*Anglo-Continental Guano Works v. Bell* (1884), 10 L. T. R. 670, 3 Tax Cas. 239, distinguished). Per Lord Atkinson [1912], A. C. p. 125: "The second proposition established in the last-mentioned case (*Gresham Life Assurance Society v. Styles*, [1892] A. C. 309) is that in these Acts the words 'profits and gains' are, where the context does not otherwise require, to be construed in their ordinary signification. I can see no reason for suggesting that this last-mentioned principle should not apply to the word 'capital' when used in these statutes, and that it too, where the context does not otherwise require, should be construed in its ordinary sense and meaning." (P. 127): "There is nothing to show that that word capital should bear a different meaning in the Income Tax Acts when applied to

the proceedings of joint stock companies. The interest is, in truth, money paid for the use or hire of an instrument of their trade, as much as is the rent paid for their office or the hire paid for a typewriting machine."

Farmer v. Scottish North American Trust, Limited, [1912]
A. C. 118, [1912] S. C. (H. L.) 26, 81 L. J. P. C. N. S. 81,
105 L. T. K S. 833, 49 Scot. L. R. 114, 5 Tax. Cas. 693.

third, all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits;

Provided, that in estimating said income, all national, state, or local taxes assessed upon the property from which the income is derived shall be first deducted. - Act of Aug. 5, 1861, § 49.

All other national, state, and local taxes, lawfully assessed upon the

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property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived. - Act of July 1, 1862, § 9.

All national, state, and municipal taxes, other than the national income tax, lawfully assessed within the year upon the property or sources of income of any person, as aforesaid, from which said annual gains, profits,, or income is or should be derived. - Act of June 30, 1864, § 117.

All national, state, county, and municipal taxes paid vrithin the year. - Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

All national, state, county, and municipal taxes paid by him within the year.- Act of July 14, 1870, § 9.

And all national. State, county, school, and municipal taxes, not. including those assessed against local benefits, paid within the year. - ^Act of August 28, 1894, § 28.

Under a former act ruled that assessments made by municipal corporations for the laying out or the grading of streets, or the construction of walks, sewers, etc., may be deducted front income where they are laid upon all taxpayers within the corporations, but if they are laid only upon the owners of the property supposed to be increased in value by the improvement,, no deduction can be allowed.

Euling, 1 Int. Kev. Eec. 150.

fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck.

Losses actually sustained during the year arising from fires, shipwreck,, or incurred in trade. - Act of March 2, 1867, § 13.

All his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade. — Act of July 14, 1870, § 9.

Also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck. — Act of August 28, 1894, § 28.

A brewery company owned an inn, which was carried on by a manager as part of their business. In estimating the balance of profits for income tax purposes, they claimed to be entitled to deduct the amount of damages and costs recovered against them by a customer, who had been injured by the fall of a chimney while he was sleeping in the inn : — Held, that they were not entitled to do so. The loss was not connected with or arising out of the trade, and was not money wholly and exclusively laid out for the purposes of the trade. Per Lord Loebuen, L. C. [1906] A. C. p. 452: "I think only such losses can be deducted as are connected with, in the sense that they are really incidental to, the trade itself. They cannot be deducted if they

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are mainly incidental to some other vocation, or fall on the trader in some character other than that of trader. The nature of the trade is to be considered. To give an illustration, losses sustained by a railway company in compensating passengers for accidents in travelling might be deducted. On the other hand, if a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss arising thereby to the grocer ought not to be deducted. Per Lord Davey (p. 453) ; "The word 'loss' in r. 3 means what is usually known as a loss in trading or in speculation. It contemplates a case in which the result of the trading or adventure is a loss, wholly or partially, of the capital employed in it."

Strong & Co. Limited v. Woodifield, [1906] A. C. 448, 75 L. J. K. B. K S. 864, 95 L. T. W. S. 241, 22 Times L. E. t54, 5 Tax Cas. 215.

Semble, by the Lord Chancellor, losses sustained by a railroad company in compensating passengers for accidents in traveling might be deducted.

Ibid.

A fire insurance company is not allowed to deduct a sum estimated to be the probable future loss on policies outstanding at the time of assessment upon which the premiums are fully

paid. Such losses are deductible when they occur.

Imperial Fire Ins. Co. v. Wilson, 35 L. T. N. S. 271 [1876],
Exch. D.

If a person is engaged in a partnership business either as a
■silent partner or otherwise, his gains and losses must be con-
sidered as incident to the business.

Euling, 4 Int. Eev. Eec. 46.

The general rule is that losses incurred in the prosecution
of one branch of business cannot be deducted from gain in
another, since an absolute loss incurred in the prosecution of a
single business is indisputably a loss of capital; but a broker
may speculate in stocks, a dry-goods merchant in cotton, a
hardware man in iron, etc., etc., and offset the gain and loss of
the legitimate business and speculation.

Euling, 1 Int. Eev. Eec. 154.

Losses in speculation cannot be deducted from salaries nor
from gains in merchandise. Where losses are sustained in

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one speculation and gains made in another speculation, such
losses niay be deducted from such gains; and losses in one-
branch of merchandise may be deducted from gains in any
other branch of merchandise.

Ruling, 1 Int. Eev. Rec. 155.

A brewery company, which carried on the business of bankers;
and money lenders as an adjunct to their business as brewers,
made loans to the customers of the brewery on the security of
publichouses, and if the security did not realize the amount
of the loan, the company wrote off the loss as a bad debt : - lield^
that the company were entitled to deduct the amount of such
losses or bad debts, that they must be taken to have carried on
one business only, and that the money advanced to the customers
was used in the business and not capital invested (Watney v.
Musgrave, distinguished).

Reid's Brewery Co. v. Male, [1891] 2 Q. B. 1, 60 L. J. Q.
B. ISr. S. 340, 64 L. T. IST. S. 294, 39 Week. Rep. 459.

The appellants were a limited company, formed to purchase
and trade with a steamship, and, in the event of her loss or sale,
to acquire some other steamship "but so that the company shall
not at any one time own more than one ship." The company
purchased the M. and traded with her from October 14, 1901 to
April 1, 1906, when she was lost at sea. With the insurance
moneys the company purchased the V. and she commenced her
voyages on October 17, 1906, and so continued over the period

of assessment to income tax ; Held;, that the company was carrying on one business throughout, and that a new business was not started when the M. was lost and the V. was acquired.

Merchiston Steamship Co. v. Turner, [1910] 2 K. B. 923, 102 L. T.]Sr. S. 363- BiiAT, J.

It was held that the loss on a farm assessed under Sched. (B.), and worked in connection with the business of a seed merchant assessed under Sched. (D.), could not be deducted from the profits of the seed business.

Brown v. Watt, 23 Scot. L. R. 403, 50 J. P. 583, 2 Tax Cas. 143 [1886].

A company, to extend its business, opened a manufactory and fitted machinery. That part of the business did not answer, and the company closed the manufactory, and removed a portion of the machinery elsewhere.

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Subsequently the company reopened the manufactory on a smaller scale. The company considered that a portion of the original cost of constructing the factory and fitting the machinery, was lost to them, and claimed a deduction in respect thereof: - Held, that the deduction was inadmissible, the loss being a loss of capital. Smith v. Westinghouse Brake Co. [1888], 2 Tax Cas. 357.

The loss of an old mill by its abandonment upon the construction of a new one, is not deductible when the old mill was in good condition. Hawaiian C. & S. Co. v. Assessors, 14 Haw. 601, 687.

A steamship company owned the whole of one ship, and fifty-nine sixths of another: - Held, by Ridley, J., following Atty.-Gen. v. Borrodaile, that the latter ship was an adventure carried on by the company jointly with other persons, and that therefore the company must be assessed by two assessments, one in respect of each ship. Farrell v. Sunderland Steamship Co. [1903], 88 L. T. N. S. 741, 4 Tax Cas. 605.

Ruled, that an actual loss realized by the sale of stock will be allowed as an offset to gains derived from the sale of similar stocks, or interest received on such stocks, but unless the sale of stock has been made, there is no ascertained, but merely a speculative, loss which cannot be deducted from any income, 3 Int. Rev. Eec. 109 ; When stocks are sold at less than their cost, the difference between their actual cost and the price at which they are sold should be allowed as a deduction in estimating the taxable income of the year in which the sale is made, 5 Int. Rev. Rec. 115 ; If a taxpayer can show the stock of an insolvent manufacturing company to be utterly worthless, he should be allowed to deduct the purchase-money originally given

by him therefor from the gains accruing in respect of the other manufacturing operations in which he may be engaged, or in respect of the dividends of other manufacturing companies, for the year when such insolvency appeared, 2 Int. Kev. Rec. 4; Where stocks, &c., are bought as a permanent investment and sold again merely to change the investment, a loss sustained in the sale may be deducted from the dividends from such stock; but where the purchase is made for the purpose of selling again on speculation, the loss sustained by the sale cannot be deducted from dividends, but may be deducted from

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gains derived from the purchase and sale of stock in the same year, 1 Int. Rev. Eec. 196.

A loss by a bad investment previously incurred, but not discovered within the year, cannot be deducted when the sole deterioration within the year was caused by the exhaustion of the property. Ee Assessment Pacific Guano & Fertilizer Co. 16 Haw. 552.

ISTo deduction from income can be allowed for a voluntary conveyance without valuable or adequate consideration. Euling, 3 Int. Eev. Eec. 172.

Losses of capital such as loss by robbery, losses as surety &c., &c., cannot be deducted from income. Euling, 5 Int. Eev. Eec. 123.

The amount paid for the good-will of a business is capital invested and not a loss to be deducted from income. Euling, 5 Int. Eev. Eec. 188.

Wo account is to be made in the estimation of income of a merely nominal appreciation or depreciation in the value of property. Therefore the mere depreciation in the value of a lease cannot be deducted from income. Euling, 2 Int. Eev. Eec. 92.

If a manufacturer has invariably estimated his stock on hand at the cost value each year since the act has been in force, he should continue so to do, and should not make return by one method after having adopted the other. Euling, 3 Int. Eev. Eec. 109.

When the income of a former year is lost, it cannot be deducted from the income of the year of tax unless used and lost in the year of tax. This rule of deduction is not extended to capital not used in business. Euling, 4 Int. Eev. Eec. 46.

Capital invested in any stockholding company is not recognized as capital used in business, and there is no deduction for the loss of such capital. Euling, 4 Int. Eev. Eec. 46.

Where repairs made on rented property by a tenant are allowed in lieu of rent, the amount actually expended for such repairs should be treated as rent paid and may be deducted from any income of the tenant. Euling, 2 Int. Eev. Eec. 61.

Penalties imposed for violation of the excise law are legitimate offsets to the profits of the business in connection with

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■which they were incurred, but they cannot be allowed as deductions from income actually realized from other pursuits.

Kuling, 4 Int. Eev. Rec. 46.

By section 23 of the Customs and Inland Eevenue Act, 1890. "Where any person shall sustain a loss in any trade, manufacture, or concern, or profession, employment, or vocation - it shall be lawful for him * * * to apply to the commissioners * * * for an adjustment of his liability by reference to the loss and to the aggregate amount of his income * * * - : Held, that this does not apply to a particular loss in ascertaining the profits of a particular business which has occurred in the course of the business, but to a general loss resulting from the business - that is a loss as the total result of the business operations. The commissioners under section 23 ought to consider the aggregate income of the person; then whether he has sustained a loss in any trade, manufacture, etc. ; and if so, what is a proper adjustment of his liability to pay income tax by reference to that loss.

Eex V. Income Tax Commissioners, 91 L. T. N. S. 94 - D.

and not compensated for by insurance or otherwise;

And not compensated for by insurance or otherwise. - ^Act of Aug. 28, 1894.

The property which is used in business, and furnishing the profits, when destroyed by fire, may be restored at the expense of those profits to the condition when destroyed. If insured the difference between the insurance received and the amount expended in restoration will be allowed. Unless the property be restored, no deduction on account of the loss of such property can be made.

Euling, 2 Int. Eev. Eec. 36.

fifth, debts due to the taxpayer actually ascertained to be worthless

and charged off within the year;

And debts ascertained to be worthless. - Act of March 2, 1867, § 13; Act of July 14, 1870, § 9; Act of August 28, 1894, § 28.

Under the Act of July 14, 1870, the amount of a promissory note taken in 1871 on the sale in that year of a patent right but not due until 1872, and paid then, is not taxable as income Foster Income Tax. - 39.

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Sed quare, if it had been due in 1871 and the defendant had allowed it to remain unpaid? T.J. S. v. Sehillinger, 14 Blatchf. 71, Fed. Cas. No. 16,228 (1876), U. S. Cir. Ct. S. Dist. JST. Y. Johnson, J.

Semhle, that the taxpayer should not be allowed to leave his debts uncollected for the purpose of evading the tax. U. S. v. Frost, 9 Int. Rev. Rec. 41, Fed. Cas. No. 15,172 (1869), U. S. Dist. Ct. 'N. Dist. 111. Deummond, J.

In Hawaii the loss of a bad debt advanced to a corporation by the owner of all its stock, when written off during the year, is not deductible if it was previously incurred. Re Assessment Hackfield Co. L'd. 16 Hawaii, 559.

sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business. See Corporation Ineoa Tax, infra, G.

A corporation purchased gasworks in a defective structural condition: - Held, not to be entitled to deduct a sum appropriated yearly out of the profits to a depreciation fund to be expended in future years in the restoration of the plant and apparatus. Clayton v. Newcastle-under-Lyme Corporation [1888], 2 Tax Cas. 416.

Income tax commissioners, in estimating the deduction to be allowed from the profits of a shipowner's business under section 12 of the Customs and Inland Revenue Act, 1878, in respect of the diminished value of the ships by reason of wear and tear, must consider what is a just and reasonable allowance to make for the depreciation in their value during the particular years of assessment, and are not entitled to take into account allowances in respect of depreciation which have been made in previous years. Hall & Co. v. Rickman, 75 L. J. K. B. N. S. 178, 1 K. R. 311, 94 L. T. IST. S. 224, 54 Week. Rep. 380, 22 Times L. R. 131- Walton, J. [1906].

A new company having purchased as a going concern the business of an old company was assessed for income tax on the average profits of the old company for the three years preceding the purchase. The amount of deductions for wear and tear to which the old company was entitled during these three years had not been given effect to in full, owing to the fact that they exceeded the amount of the taxable income of the old company during that time: Held, that the new company was entitled

to deduct from its taxable income the balance of the deductions allowable to the old company.

Scottish Shire Line v. Inland Revenue [1912] S. C. 1108—
Ct. of Sess.

In ascertaining the profits from the business of coal and iron masters, it was held that a deduction of a percentage claimed for (1) sinking pits, and (2) depreciation of buildings and machinery, was not allowable.

Addie & Sons v. Solicitor of Inland Revenue [1875] 2 K.
431, 12 Scot. L. E. 274, 1 Tax Cas. 1.

The appellants, a firm of brewers, purchased the leases of public houses which they let to tenants, who covenanted to purchase from the brewers all the beer sold therein. In some cases the appellants paid premiums for such leases. In ascertaining their profits, they claimed to deduct for each year a portion of the amount paid as premiums, as representing a part of their capital exhausted during the year in earning profits: — Held, that the deduction was not allowable.

Watney v. Musgrave [1880] L. E. 5 Exch. Div. 241, 49
L. J. Exch. N. S. 493, 42 L. T. N. S. 690, 28 Week. Rep.
491, 1 Tax Cas. 272.

In ascertaining the profits of the business of licensed victuallers, who had purchased the lease, which had 20[^] years to run, of their business premises, for £34,000, a deduction of £1,725, viz., 1-20[^] part of £34,000, was claimed for depreciation in value of the lease for the year: — Held, that this deduction could not be made, and that the deduction must be limited to the existing annual value of the premises, whatever the premium originally paid may have been.

Gillatt and Watts v. Colquhoun [1884] 33 Week. Rep. 258,
2 Tax Cas. 76.

not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made,
See Corporation Income Tax, *infra*, 6, and cases there cited.

Where land is acquired for commercial purposes of which one stratum only is of any value, and that stratum is in the process of exhaustion, such land is "capital" within the meaning of the First case of Schedule D of the Income Tax Act 3 842 and no

deduction, can be allowed in respect of such exhaustion, which is a diminution of capital for which deduction is prohibited by section 159.

Alianza Co. v. Bell, 75 L. J. K. B. IST. S. 44, [1906] A. C. 18, 93 L. T.]Sr. S. 705, 54 Week. Rep. 413, 5 Tax Cas. 172, 22 Times L. R. 94— H. L. (E.)

but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made:

Provided, That no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate;

No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate. — Act of June 30, 1864, § 117; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13; Act of July 14, 1870, § 9.

Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate. — Act of August 28, 1894, § 28.

Expenses incurred for usual and ordinary repairs on farms may be deducted from income, but the amount deducted must not exceed the average paid out for such purposes for the preceding five years. Amounts expended for permanent improvements or betterments, made to increase the value of any property or estate, cannot be deducted.

Ruling, 1 Int. Rev. Rec. 140.

Repairs must be distinguished from permanent improvements. The replacing of worn-out tools or machinery should be considered as repairs in so far as the new articles equal the estimated value of the old, and as permanent improvements in the amount by which the value of the new articles exceed that of the old.

Ruling, 2 Int. Rev. Rec. 61.

Amounts expended by the purchaser of a building in repairing injuries which occurred thereto prior to his purchase, are, so far as he is concerned, betterments made to increase the value of the property, and should not be allowed as deductions from income.

Ruling, 6 Int Rev. Rec. 18.

Permanent improvements and betterments as used in Sec-

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tion 117 are very nearly synonymous, and refer to that class of

improvements which permanently increase the value of the property upon which they are made, while repairs are understood to be those improvements made or work done upon the property which serve merely to prevent its becoming useless or depreciating in value. Amounts expended in improvements or betterments are not deductible from income, but repairs are. Euling, 5 Int. Eev. Eec. 130.

Under the Hawaiian statute, no deduction can be made for the cost of a new building ; nor for that of the replacement of a steel by a wooden bridge, beyond the estimated cost of a new wooden bridge. Ee Income Tax Appeal Cases, 18 Haw. 596.

seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income as hereinafter provided;
See subsection G, infra.

All gains, profits, or income * * * derived from interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, express, telegraph, steamboat, ferry-boat, or railroad company, or corporation, or on any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies, savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry-boat, express, or railroad companies, as aforesaid, or derived from advertisements, or any articles manufactured, upon which specific, stamp, or <id valorem duties shall have been directly assessed or paid, shall also be deducted. - Act of July 1, 1862, § 9.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum ; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise." - Act of June 30, 186 1,

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And there shall also be deducted the income derived from dividends

on shares in the capital stock of any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slack-water company, and the interest on any bonds or other evidences of indebtedness of any such corporation or company, which shall have been assessed and the tax paid, as hereinafter provided. — Act of June 30, 1804, § 117.

No deduction shall be made for dividends or interest received from any association, corporation, or company. — Joint Resolution of July 4, 1814.

In ascertaining the income of any person liable to an income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the Commissioner of Internal Revenue, or other officer authorized to receive the same, shall be included; and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person. — Act of March 3, 1865, § 1.

Except the amount of income received from institutions or corporations whose officers as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the officer authorized to receive the same. — Act of March 2, 1867, § 13.

[The return shall not include] the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made and of the interest or coupons paid by such corporation.— Act of July 14, 1870, § 11.

Provided also, that in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this act. — Act of August 28, 1894, § 28.

Under the Act of June 30, 1864, an insurance company holding shares in a bank was not liable to a tax upon a dividend declared by the bank upon which the bank has already paid the tax.

Merchants Ins. Co. v. McCartney, 12 Int. Rev. Eec. 122, Fed. Cas. No. 9,443 (1870), U. S. Cir. Ct. Dist. Mass. Lowell, J.

Although sections 120 and 122 of the Act of March 3d, 1865, clearly contemplate that the Government shall receive five per cent of the whole amount paid out by any of the companies enumerated on account of dividends or interest upon bonds, it has been contended by some companies that as they were merely authorized and not required to withhold the tax from

such dividends or interest, it was competent. for them to pay

the tax, and charge the same to their expense account, and make the payment to the stockholder or bondholder free of tax. The result of this construction is to give the Government five dollars for every one hundred dollars paid to the stockholder, instead of five dollars for every ninety-five dollars thus paid.

When the company adopts that construction, the deduction provided for in the 116th and 117th sections should not be allowed.

Euling, 1 Int. Eev. Kec. 116.

Whenever a stockholder makes his income return under section 116, he should return as his income from dividends, not only the \$95 from \$100 paid to him by the company, but also the \$5 paid for him to the Government.

For example :

A's dividend or share of the profits in a railroad company is \$4,000. Of that sum the company withholds and pays into the Government five per cent, that is \$200 ; the remaining \$3,800 is paid to A. In addition to income from dividends, he has an income of \$800 from other sources. From this he is entitled to deduct \$600, leaving \$200 as taxable income from other sources. To this add the \$3,800 received directly from the company, and he has a taxable income of \$4,000. Five per cent upon that sum is \$200. From this deduct the \$200 withheld by the company and nothing remains. The Government has received no tax whatever from the \$200 taxable income from other sources.

Euling, 2 Int. Eev. Eec. 100.

eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of \$3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.

"All persons, firms, copartnerships, companies, corporations, joint-stock, companies, or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment

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of interest, rent, salaries, wages, premiums, annuities, compensations, remuneration, emoluments, or other fixed or terminable annual gains, profits, and income of another person, exceeding three thousand dollars for any taxable year, other than dividends on capital stock, or from the net

earnings of corporations and joint-stock companies or associations subject to like tax who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district,

are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. * * * Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trusts or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to three thousand dollars, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government; and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed three thousand dollars, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons." Subsection C, infra.

In cases where the salary or other compensation paid to any person in the employment or service of the United States, shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid in such manner as the Commissioner of Internal Revenue, under the direction of the Secretary

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of the Treasury, may prescribe. — Act of June 30, 1864, § 117; Act of March 3, 1865, § 1.

In cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of one thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have

accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

And provided further, that in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, • or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid. — Act of August 28, 1894, § 28.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.

In the case of a corporation, joint stock company or association, or insurance company, organized, authorized or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed five per centum of the gross value at the mine of the output for the year for which the computation is made; * * * (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from

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all sources within and without the United States: Provided, that in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof or the District of Columbia. Infra. G.

That in computing net income under this section there shall be excluded the interest upon the obligations of a state or any political subdivision thereof,

Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public-utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as telif payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person 'or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract. — Subsection G infra.

"Another question is directly presented by the record as to the validity of the tax levied by the act upon the income derived from municipal bonds. The averment in the bill is that the defendant company owns two millions of the municipal bonds of the city of New York, from which it derives an annual income of \$60,000, and that the directors of the company intend to return and pay the taxes on the income so derived. The Constitution contemplates the independent exercise by the Nation and the State, severally, of their constitutional powers. As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United

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States have no power under the Constitution to tax either the instrumentalities or the property of a State. A municipal corporation is the representative of the State and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. *Collector v. Day*, 11 Wall. 113, 124, 20 L. ed. 122, 125 ; *United States v. Eailroad Company*, 17 Wall. 322, 332, 21 L. ed. 597, 601. In *Collector V. Day*, it was adjudged that Congress had no power, even by an act taxing all incomes, to levy a tax upon the salaries of judicial officers of a State, for reasons similar to those on which it had been held in *Dobbins v. Commissioners*, 16 Pet. 435, 10 L. ed. 1022, that a State could not tax the salaries of officers of the United States. Mr. Justice Nelson, in delivering judgment, said : 'The general government, and the States, although

both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme ; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States.' This is quoted in *Van Brocklin v. Tennessee*, 117 U. S. 151, 178, 29 L. ed. 845, 854, 6 Sup. Ct. Rep. 670, and the opinion continues: 'Applying the same principles, this court, in *United States v. Eailroad Company*, 17 Wall. 322, 21 L. ed. 597, held that a municipal corporation within a State could not be taxed by the United States on the dividends or interest of stock or bonds held by it in a railroad or canal company, because the municipal corporation was a representative of the State, created by the State to exercise a limited portion of its powers of government, and therefore its revenue, like those of the State itself, were not taxable by the United States. The revenues thus adjudged to be exempt from Federal taxation were not themselves appropriated to any specific public use, nor derived from property held by the State or by the municipal corporation for any specific public use, but were part of the general income of that corporation, held for the public use in no other sense than all property and income, belonging to it in its municipal character, must be so held. The reasons for

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exempting all the property and income of a State, or of a municipal corporation, which is a political division of the State, from Eederal taxation, equally require the exemption of all the property and income of the national government from State taxation.' In *Mercantile Bank v. ISTew York*, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Eep. 826, this court said: 'Bonds issued by the State of l^ew York, or under its authority by its public municipal bodies, are means for carrying on the work of the government, and are not taxable even by the United States, and it is not a part of the policy of the government which issues them to subject them to taxation for its own purposes.' The question in *Bonaparte v. Appeal Tax Court*, 104 U. S. 592, 26 L. ed. 845, was whether the registered public debt of one State, exempt from taxation by that State or actually taxed there, was taxable by another State when owned by a citizen of the latter, and it was held that there was no provision of the Constitution of the United States which prohibited such taxation. The States had not covenanted that this could not be done, whereas, under the fundamental law, as to the power to borrow money, neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each. The law imder consideration provides 'that nothing herein contained shall apply to States, counties or municipalities.' It is contended that although the property or revenues of the States or their instrumentalities cannot be taxed, nevertheless the income derived from state, county, and municipal securities

can be taxed. But we think the same want of power to tax the property or revenues of the States or their instrumentalities exists in relation to a tax on the income from their securities, and for the same reason, and that reason is given by Chief Justice Marshall in *Weston v. Charleston*, 2 Pet. 449, 468, 7 L. ed. 481, 488, where he said : 'The right to tax the contract to any extent, when made, must operate upon the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence, depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden on the operations of government. It may be carried to an extent which shall arrest them entirely. * * * The tax on government stock is thought by this court to be a tax on the

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contract, a tax on the power to borrow money on the credit of the United States, and consequently to be repugnant to the Constitution." Applying this language to these municipal securities, it is obvious that taxation on the interest therefrom would operate on the power to borrow before it is exercised, and would have a sensible influence on the contract, and that the tax in question is a tax on the power of the State and their instrumentalities to borrow money, and consequently repugnant to the Constitution."

Pollock V. Farmers' Loan & Trust Co. 157 U. S. 429, 583-586, 39 (L. ed.) 759, 820, 821, 15 Sup. Ct. Eep. 673, per Fuller, C. J.

See also the opinions of Governor Hughes, Governor Fort, and Senator Eoot, quoted supra, § 27.

This exempts interest upon the obligations of counties, townships, wards, precincts and special assessment districts, created under the laws of the States for the purpose of the improvement of streets and public highways, the provision of sewerage, gas and light, and the reclamation, drainage, or irrigation of considerable bodies of land within the same so long as they are not created for a private purpose.

Opinion of Attorney General McEeynolds January 30th, 1914, cited T. D. 1946, overruling as to irrigation and reclamation districts, T. D. 1910.

and upon the obligations of the United States or its possessions;

The House bill here contained the phrase "the principal and interest of which are now exempt by law from Federal taxation." This was stricken out in the Senate.

Provided, That upon such portion of said income as shall be derived from interest upon treasury notes or other securities of the United States, there shall be levied, collected, and paid a tax of one and one half per centum. * * * Excepting that portion of said income derived from interest on treasury notes and other securities of the Government of the United States, which shall pay one and one half per centum. — Act of Aug. 5, 1861, § 49.

That upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or of five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collected, and paid a duty not exceeding one and one half of one per centum, anything in this act to the contrary notwithstanding. — Act of July 1, 1862, § 91.

Provided, that income derived from interest upon notes, bonds, and other securities of the United States, shall be included in estimating incomes under this section. — Act of June 30, 1864, § 116.

Provided, that incomes derived from interest upon notes, bonds and other securities of the United States. * * * shall be included in estimating incomes under this section. — Act of March 3, 1865, § 1.

There shall be included all income derived from interest upon notes, bonds, or other securities of the United States. — Act of March 2, 1867, § 13.

There shall be included * * * interest upon notes, bonds, or other securities of the United States. — Act of July 14, 1870, § 7'.

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Except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation. — Act of August 28, 1894, § 28.

"District of Columbia 3.65 bonds" are not bonds of the United States or exempt from taxation under § 5214, Eev. Stat. (U. S. Comp. Stat 1901, p. 3,500).

Attorney General Devens, 16 Ops. Atty. Gen. 173 (1878).

"It would seem to be clear that the fact that they are obligations of the United States does not dispose of the question whether they are to be included within the amount exempted under this statute. It would not be contended, for instance, that the 'gold and silver certificates,' as they are familiarly called, of the United States, which are certificates of indebtedness, to the payment of which the United States is solemnly pledged, would be exempt under this statute."

Ibid.

Manhattan Co. v. Blake, 148 U. S. 412, 37 L. ed. 504, 13 Sup. Ct. Rep. 640 (1893), Blatchfoed, J.

A statute providing for taxes on incomes is constitutional under the Constitution of New Hampshire, except so far as it authorizes a tax on securities given to secure a loan to the United States.

Opinion of the Justices, 53 K H. 634 (1865).

No deduction should be allowed for the proportionate interest of shareholders in the stock or bonds of the United States held by a corporation.

Ruling, 4 Int. Rev. Rec. 13.

The fact that United States bonds are above par does not render the owner liable to State taxation by the State on the excess.

People ex rel. Leonard v. Commissioners, 90 N. Y. 63 (1882).

also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the Supreme and inferior Courts of the United States now in office.

That on, and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid, on all salaries of officers, or payments, to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars.— Acts of July 1, 1862, § 86.

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That there shall be levied, collected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars. — Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

There shall be levied, collected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of one thousand dollars per annum, a tax of five per centum on the excess above the said one thousand dollars. — Act of March 2, 1867, § 13.

That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators, representatives, and delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars. — Act of August 28, 1894, § 33.

And all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Con-

gress, above six hundred dollars, * * ♦ shall also be deducted. — Act of July 1, 1862, § 91.

Also [is to be deducted] the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives and delegates in Congress, above the rate of six hundred dollars per annum. — Act of June 30, 1864, § 117.

Also [is to be deducted] the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives and delegates in Congress, above the rate of six hundred dollars per annum. — Act of March 3, 1865, § 1.

Except that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted.— Act of March 2, 1867, § 13.

Including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative or delegate in Congress; except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been withheld. — Act of July 14, 1870, § 7.

Military or naval pensions allowed to any person under the laws of the United States ♦ * * shall be exempt. — Act of July 14, 1870, § 8.

[The return shall not include] that portion of the salary, or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative or delegate in Congress from which the tax has been deducted. — Act of July 4, 1870, § 11.

Except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States,

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including senators, representatives, and delegates in Congress, from which the tax has been deducted.

And except that portion of any salary upon which the employer is required by law to withhold, and does withhold, the tax, and pays the same to the officer authorized to receive it. — Act of August 28, 1894, § 28.

A law taxing the salaries of a president of the United States, or judges of the United States courts, who were in office at the time of its passage, would be unconstitutional.

Attorney General Hoar, 13 Ops. Atty. Gen. 161 (1869).

A law taxing the salaries of the civil officers of the United States, but not specifically naming either the president or the judges, is not to be construed as imposing a tax upon the salaries of such officers whose term of office began after the imposition

of the tax.

Ibid.

"It would not be competent for Congress during his [the president's] term of office, by any repeal or diminution of the tax, to increase the amount paid to him. So that if the law imposing an income tax were repealed, the president alone, of the citizens of the country, would continue liable for its payment during the term for which it had been originally imposed, if his official term continued so long."

Ibid.

A tax upon the salary of a judge imposed subsequently to his appointment is not a diminution of his salary so as to conflict with a constitutional prohibition against diminishing salaries of judges during their terms of office.

Commissioners of Northumberland County v. Chapman, 2 Rawle (Pa.) 73 (1829).

Euling, 4 Int. Eev. Eec. 132.

"M. That the provisions of this section shall extend to Porto Pico and the Philippine Islands: * * * And Provided further. That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the government of the District of Columbia, Porto Pico and the Philippine Islands, or the political subdivisions thereof."

and the compensation of all officers and employees of a State or any political subdivision thereof

Consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which

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may be derived from their official emoluments, or from property in foreign countries: Provided, that the governments which such consuls may represent shall extend similar exemption to consuls of the United States. -Act of June 30, 1864, § 178; Act of July 14, 1870, § 14.

Provided that salaries due to state, county or municipal officers shall be exempt from the income tax herein levied. - Act of August 28, 1894, § 33.

The salary of a state officer is not taxable by the United States. So held, at common law, of a probate judge in Massachusetts.

The Collector v. Day, 11 Wall. 113, 20 L. ed. 122 (1870), T.J. S. Supreme, ISTelson, J. affirming Day v. Buffington, 3 Cliff. 376, Fed. Cas. No. 3,675 (1869), U. S. Ct. Dist. Mass. Clifford, J.

So held, also, of the salary of a judge of a court of a State, whose salary was paid by a city and fixed by a county board.

Freedman v. Sigel, 5 Chicago Leg. News, 196, Fed. Cas. No. 5,080 (1872), U. S. Cir. Ct. S. Dist. N. Y. Shipman, J.

So held, also of the salary of a State's attorney.

U. S. V. Eitchie, 4 Chicago Leg. News, 139, Fed. Cas. No. 16,168 (1872), U. S. Dist. Md. Giles, J.

except when such compensation is paid by the United States Government.

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of \$3,000,

If such annual income exceeds the sum of eight hundred dollars, a tax of three per centum on the amount of excess of such income above eight hundred dollars. — Act of Aug. 5, 1861, § 49.

Upon the income, rents, or dividends accruing upon any property, securities, or stocks owned in the United States by any citizen of the United States residing abroad, there shall be levied, collected, and paid a tax of five per centum. — Act of Aug. 5, 1861, § 49.

If such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars. — Act of July 1, 1862, § 90.

If such annual gains, profits, or income, exceed the sum of six hundred dollars, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars; and a duty of seven and one half of one per centum per annum on the excess over five thousand dollars and not exceeding ten thousand dollars; and a duty of ten per centum on the excess over ten thousand dollars. — Act of June 30, 1864, § 116. Foster Income Tax. — 40.

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A special income duty * * * at the rate of five per centum on aU

sums exceeding six hundred dollars. — Joint Resolution of July 4, 1864.

A duty of five per centum on the excess over six hundred and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars. — Act of March 3, 1865, § 1.

A tax of five per centum on the amount so derived over one thousand dollars.— Act of March 2, 1867, § 13.

A tax of two and one half per centum upon the gains, profits, and income.— Act of July 14, 1867, § 6.

The tax herein provided shall be assessed upon the annual income of any person shall be exempt from said income tax, in the manner herein after provided. — Act of July 14, 1870, § 8.

A tax of two per centum on the amount so denied over and above four thousand dollars. — Act of August 28, 1894, § 27.

There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company, association, or insurance company. — Corporation Tax Act of August 5, 1909.

"The income tax law under consideration is marked by discriminating features which affect the whole law. It discriminates between those who receive an income of four thousand dollars and those who do not. It thus vitiates, in my judgment, by this arbitrary discrimination, the whole legislation. Hamilton says in his papers (the *Continentalist*), "the genius of liberty reprobates everything arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands ; whatever liberty we may boast of in theory it cannot exist in fact while (arbitrary) assessments continue." I Hamilton's Works,, ed. 1885, 270. The legislation, in the discrimination it makes, is class legislation. Whenever a distinction is made in the burdens a law imposes or in the benefits it confers on any citizens by reason of their birth, or wealth, or religion, it is class legislation, and leads inevitably to oppression and abuses, and to general unrest and disturbance in society. It was hoped and believed that the great amendments to the Constitution which followed the late civil war had rendered such legislation impossible for all future time. But the objectionable legislation reappears in the act under consideration. It is the same in essential char-

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acter as that of the English income statute of 1691, which taxed Protestants at a certain rate, Catholics, as a class, at double rate of Protestants and Jews at another and separate rate. Under wise and constitutional legislation every citizen should contribute his proportion, however small the sum, to the support of the government, and it is no kindness to urge any of our citizens to escape from that obligation. If he contributes the smallest mite of his earnings to that purpose he will have a greater regard for the government and more self-respect for himself feeling that though he is poor in fact, he is not a pauper of his government. And it is to be hoped that, whatever woes and embarrassments may betide our people, they may never lose their manliness and self-respect. Those qualities preserved they will ultimately triumph over all reverses of fortune."

Pollock V. Farmers' Loan and Trust Co. 157 U. S. 429, 596, 39 L. ed. 759, 824, 15 Sup. Ct. Eep. 912, Per Pibld, J.

An exemption of \$500 is not a constitutional provision that "taxation shall be equal and uniform throughout the state."

City of New Orleans v. Fourchy, 30 La. Ann. 910 (1878).

"One of the questions most elaborately discussed in this case is dehors the record, to wit : that the tax on defendant's income is unconstitutional, for the reason that the city has exempted \$1,000 of income in violation of article 118 of the Constitution [quoted ante]. We do not find in defendant's answer any allegation, nor in the record any proof of the fact that such exemption was in reality made. True, there was a law of the state authorizing and directing such exemption, but non constat that the city did so, especially if the doing so would have been unconstitutional, as argued by defendant."

Ibid, per Spencer, J.

An exemption of five thousand dollars in a tax on corporations was held to be constitutional.

Flint v. Stone Tracy Co. 220 U. S. 107, 173, 55 L. ed. 389, 422, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

"It is again objected that incomes under \$5,000 are exempted from the tax. It is only necessary, in this connection, to refer to Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747, supra, in which a tax upon inheritances in excess of \$10,000 was sustained.

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In Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct Eep. 594, a graded inheritance tax was sustained.

Ibid.

plus \$1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of \$1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of \$1,000 be deducted by both a husband and a wife: Provided, That only one deduction of \$4,000 shall be made from the aggregate income of both husband and wife when living together. Provided, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family, composed of parents and minor children, or husband and wife, except in cases where such separate incomes shall be derived from the separate and individual estates, gains, or labor of the wife or child: * * * - Act of June 30, 1864, § 116.

Provided further, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family, composed of parents and minor children, or husband and wife. - ^Act of March 3, 1865, § 1.

And Provided, further, That only one deduction of one thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents and one or more minor children, or husband and wife; that guardians shall be allowed to make such deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family and have joint property interests only one deduction shall be made in their favor. - Act of March 2, 1867, §13.

Only one deduction of two thousand dollars shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or of husband and wife; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits. - ^Act of July 14, 1870. § 8.

For the purpose of allowing said deduction from the income of any religious or social community holding all their property and the income therefrom jointly and in common, each five of the persons composing isuch society, and any remaining fractional number of such persons, less than five over such groups of five, shall be held to constitute a, family, and a deduction of two thousand dollars shall be allowed for each of said families.- Act of July 14, 1870, § 8.

[The return shall not include] the wages of minor children not received. -Act of July 14, 1870, § 11.

Protnded further, that only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family.

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ebinpesied of one or both parents, and one or more minor children, or hus-

band and wife. — Act of August 28, 1894, § 28.

Where it is difficult to apportion or agree upon the apportionment of the amounts exempted among the members of any family, the ease may be referred to the Internal Revenue Office.

Euling, 1 Int. Rev. Dec. 149.

When the wife has legal control of her own income, she should make separate returns of the same, and the exemption of \$600 should be shared in proportion to the separate amount of income, but the rate of ten per cent should be assessed only on the excess of each income over \$5,000.

Euling 2 Int. Rev. Dec. 61.

The deduction shall be rated by proportion according to the respective incomes of the members of the family. Thus, A., the husband, has an income of \$9,000, B., the wife, an income of \$1,000, A. is entitled to deduct from his income nine-tenths of \$600, and B. from hers one-tenth of \$600. A.'s tax would be five per cent of \$4,460 and ten per cent of \$4,000, while B.'s tax would be five per cent on \$940.

Euling, 1 Int. Rev. Dec. 188.

The word "family" is construed to include not only parents' and minor children living under the same roof, but also husband and wife, though living separately, unless separated by divorce or other operation of law such as to break up the family relation; and also minor children, although living separately from parents and supported by property in their own right, unless the parent or parents are legally absolved from all relations toward said children, or legally restrained from all personal control over them.

Euling, 1 Int. Rev. Dec. 171.

In the definition of the family, no distinction is made between natural parents and parents at law, nor between a natural and step-child; although only one deduction can be allowed if the parties are generally possessed with incomes free from the control of another. The rate of tax will be determined by the amount of each separate income. If neither party has an income in his own right in excess of \$5,000 the tax will be assessed at the rate of five per cent.

Euling, 1 Int. Rev. Dec. 156.

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D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first:
The tax herein provided shall be assessed upon the annual Income of

the persons hereinafter [before] named for the year next preceding the time for assessing said tax, to wit, the year next preceding the first day of January, eighteen hundred and sixty-two. — Act of August 5, 1861, § 49. That the tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-two. — Act of August 5, 1861, § 51.

And the duty herein provided for shall be assessed and collected upon the income for the year ending the thirty-first day of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter.— Act of July 1, 1862, § 91.

Provided, that the return [required from certain corporations] for the first of January, eighteen hundred and sixty-three, shall be made within thirty days after the passage of this act. — Act of March 3, 1863, § 14.

And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, or income for the year ending the thirty-first day of December next, preceding the time for levying, collecting, and paying said duty.— Act of June 30, 1864, § 116; Act of March 3, 1865, § 1.

The duties or incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June in each year.— Act of June 30, 1864, § 119.

And the tax herein provided for shall be assessed, collected and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.— Act of March 2, 1867, § 13.

The tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying and collecting said tax. — Act of July 14, 1870, § 10.

Received in the preceding calendar year. » * »

And the tax herein provided for shall be assessed by the Commissioner of Internal Revenue and collected and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax. — Act of August 28, 1894, § 27.

When a decedent dies within the year, the tax must be paid upon so much of his income as accrued within the year and prior to his decease.

Mandell v. Pierce, 3 Cliff. 134, Fed. Gas. No. 1,008 (1868), U. S. C. Ct. Dist. Mass., Clifford, J.

In the case of a decedent, the same deductions are to be made

from the income accruing before his death as would be made if he had lived but had ceased to receive any further income.

Ibid.

A person living on the first Monday in May in any year is liable by himself or his executors or administrators to be taxed for his income the preceding year.

Euling, 2 Int. Eev. Eec. 54.

A person having made all returns of income for which he was liable while living, will, on dying, leave his estate free from liability for income tax.

Ruling, 2 Int. Rev. Eec. 54.

If a person prior to the first Monday in May in any year make a return of income for the preceding year and then dies before the first Monday in May of the year in which he makes the return, neither he nor his representatives are liable for tax.

Ruling, 2 Int. Rev. Eec. 54.

All income of an estate after the owner dies, is income to the persons entitled to receive the same, and should be taxed to them or their legal representatives.

Euling, 2 Int. Eev. Eec. 54.

ISTeithere deceased persons nor their executors or administrators are to be taxed for income or gains made on or after January in one year and prior to the first Monday in May of the succeeding year, the person dying at any time before those two dates including the first.

Euling, 2 Int. Eev. Eec. 54.

Only property passing from the testator or the testatrix can be considered liable to legacy taxes, but income accruing to the estate subsequently to the testator's death is taxable as income of the persons benefited thereby.

Euling, 1 Int. Eev. Eec. 172.

Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein

provided for.

"The joint resolution of July 4th, 1864, imposed a tax upon

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all income of the previous year, although one tax on it had already been paid, and no one doubted the validity of the tax or attempted to resist it." Miller, J., *Stockdale v. Insurance Cos.* 20 Wall. 323, at p. 331, 22 L. ed. 348, 351 (1873), U. S. Supreme.

The act of July 14, 1870, imposed a tax upon all earnings for the year 1870, and was not thereby unconstitutional as being retroactive.

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873), U. S. Supreme, Millee, J., overruling *Home Mutual Ins. Co. V. Stockdale*, 16 Int. Eev. Rec. 30, Fed. Gas. No. 6,662 (1872), U. S. Cir. Ct. Dist. La. Dubell, J.

Schuylkill Nav. Co. v. Elliott, 21 Int. Eev. Rec. 342, Fed. Cas. No. 12,497 (1875), U. S. Cir. Ct. W. Dist. Pa., Mc-Kennan, J.

"It is clearly * * * perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and to assume as a standard the transactions immediately prior is certainly not unreasonable."

Read, J., in *Drexel & Co. v. Commonwealth*, 46 Pa. 31, at p. 40 (1863).

For the general purposes of assessment the tax year in Alabama begins January 1st, and ends December 31st. Property owned on the first of January is returned for assessment that year. The tax on income, however, is given in, assessed, and paid the year after it accrues. Before that it cannot be known. It is not, therefore, double taxation to tax income of one year invested the succeeding year ; once as income, and a second time as investment.

Board of Revenue v. Montgomery Gas Light Co. 64 Ala. 269 (1879).

Surplus earnings, made and laid aside before the passage of the first income tax law and profits on the sales of real estate bought before that time were not taxable thereunder.

Merchants' Ins. Co. v. McCartney, 12 Int. Rev, Rec. 122, Fed. Gas. No. 9,443 (1870), U. S. Cir. Ct. Dist. Mass. Lowbi-l, J.

The Act of July 14, 1870, declared that "there shall be levied

and collected for and during the year 18Y1, a tax of 2[^] per cent on the amount of all interest paid by corporations and on the amount of dividends of earnings hereafter declared" by them. Held, to include interest paid and dividends declared during the last five months of 1870.

To interpret the act the Court had recourse to the journals of Congress.

Blake v. National Banks, 23 Wall. 307, 23 L. ed. 119 (1874), U. S. Supreme, Hunt, J.

Missouri Eiver etc. E. E. v. U. S. 19 Fed. 66 (1884), U. S. Cir. Ct, W. Dist. Mo., McCeaey, J., ace.

Interest and dividends accruing and earned in the last year of the tax, but payable the year following, held taxable.

Barnes v. The Eailroads, 17 Wall. 294, 21 L. ed. 544 (1872), IT. S. Supreme, Cliffokd, J. (Waite, C. J., Steong, Davis, and Field, J J., dissenting.)

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873), U. S. Supreme, Millee, J.

Eailroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068 (1879), Waite, C. J. contra.

[The court distinguishes this case from Barnes v. Eailroads on the ground that it appeared there expressly that the dividends (nothing being said of the interest in that case) were earned in the last year of the tax, while in the principal case there was no finding as to when the interest was earned, the only finding being that the interest was paid after the tax lapsed.]

Ibid.

U. S. V. Indianapolis, etc. E. E. 113 U. S. 711, 28 L. ed. 1140, 5 Sup. Ct. Eep. 724 (1884), Haelan, J., contra.

[In this case it appeared expressly that the interest was paid out of earnings made in the last year of the tax, and thus the ease falls within the distinction taken as to Barnes v. Eailroads in Eailroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068, which is relied on as a controlling authority. The Court say, at p. 713, "We do not perceive that the liability of the corporation for tax on this interest, as such, is affected by the circumstance that the interest was paid out of the earnings of the previous year." The distinction should probably be regarded as overruled, though the case taking it is followed.]

Ibid.

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On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, In case of an income tax on or before the first day of March in each year.— U. S. Rev. Stat. § 3173 (U. S. Comp. Stat. 1901, p. 2065) as amended by this act.

In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. — § 3178 of Rev. Stat, as amended by this act, infra.

On or before the day designated by law. — Act of July 14, 1870, § 11.
On or before the day provided by law. — Act of August 28, 1894, § 29.

a true and accurate return,

To make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides of the gross amount of his income, gains, and profits as aforesaid. — Act of July 14, 1870, § 11.

It shall be the duty of any person, partnership, firm, association, or corporation made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return verified by oath or affirmation. — U. S. Rev. Stat. § 3173, as amended by this act, infra.

The act of August 5, 1861, contained no provision for a return by the taxpayer before the assessment of the tax, though by § 51 it was the duty of the several collectors, in case of failure to collect the tax, to "Examine under oath the person assessed under this act or any other person."

To make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, * * * according to the requirements hereinbefore stated. — Act of July 1, 1862, § 93.

To make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which he resides, of the amount of his or her income, * ♦ ♦ according to the requirements hereinbefore mentioned, stating the sources from which said income is derived, whether from any kind of property, or the purchase and sale of property, rents, interest, dividends, salaries, or from any profession, employment,

or vocation, or otherwise. — Act of June 30, 1864, § 118.

To make and render a list or return, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

To make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to

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'the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid. — Act of August 28, 1894, § 29.

The Act of June 30, 1864, as amended by the Act of July 13, 1866, required returns to state whether they were made according to their values in legal tender or according to their values in coined money. Held, that the plaintiff having made its return in terms of coin (then at a premium) could not pay the tax in legal tender (then at a discount) of the same face value.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95 (1868),
TJ. S. Supreme, Swatne, J.

under oath or affirmation,

And the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

The assistant assessor shall require every such return to be verified by the oath of the party rendering it. — Act of July 14, 1870, § 11.

And the collector or deputy collector, shall require every list or return to be verified by the oath or affirmation of the party rendering it. — Act of August 28, 1894, § 29.

Quere, whether the oath presented with the first return under the Act of July 1, 1862, was required by that act so that perjury could be assigned upon it?

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. Cir. Ct., S. Dist. N. Y., Hall, J.

shall be made by each person of lawful age,

r. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less

than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat •or evade the assessment required by this section to be made shall be guilty •of a misdemeanor, and shall be fined not exceeding \$2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

For general provisions as to the making of returns of income, see §§ 3173, ■3176, of Rev. Stat. (U. S. Comp. Stat. 1901, pp. 206f, 2068) as amended iby this act, post, App. p. 433.

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That it shall be the duty of all persons of lawful age. — Act of July 1, 1862, § 93; Act of June 30, 1864, § 118; Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

That it shall be the duty of all persons. — Act of July 14, 1870, § 11.

That it shall be the duty of all persons of lawful age. — ^Act of August 28, 1894, § 29.

A minor, if he have no guardian, should make return himself. If he refuses, an independent assessment should be made as in other cases, without penalty.

Euling, 7 Int. Kev. Eec. 59.

except as hereinafter provided,

That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; — infra.

Provided, further, that persons liable for the normal Income Tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person. — infra. subject to the tax imposed by this section, and having a net income

of \$3,000 or over for the taxable year,

Provided further, that in either case above mentioned no return of income not exceeding \$3,000 Arabic shall be required, infra.

Whose gross income during the preceding year exceeded two thousand dollars.— Act of July 14, 1870, § 11.

Having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed. * * *

But persons having less than three thousand five hundred dollars income are not required to make such report. — Act of August 28, 1894, § 29.

Persons whose income did not exceed \$2,000 did not need to make returns, nor even to make affidavit that their income did, not exceed that sum.

Euling, 13 Int. Eev. Eec. 97.

to the collector of internal revenue for the district in which such person resides or has his principal place of business.
To the proper officer of internal revenue. — Act of July 1, 1863, § 93.

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To the assistant assessor of the district in which he resides. — Act of June 1864, § 118; Act of July 14, 1870, § 11.

To the assistant assessor of the district in which they reside. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

To the collector or a deputy collector of the district in which they reside.— Act of August 28, 1894, § 29.

As all income tax is required to be assessed and paid in the district in which the party resides, the legal residence of such party often becomes an essential subject of inquiry. It seems that where a party exercises his right of franchise, or where he is entitled so to exercise it, it is the best criterion of his residence. Where, however, a party has no vote, the tax is properly assessable where a personal property tax is paid.

Editorial in 1 Int. Rev. Rec. 153.

In case of removal out of a district after the first of May, the correct practice would seem to be to forward the return for collection to the district to which the party has removed.

Ibid.

-or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, See supra.

in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.
In such form and manner as may be prescribed by the Commissioner of

Internal Revenue. — Act of June 30, 1864, § 118; Act of March 3, 1865, § 1 ; Act of March 2, 1867, § 13.

In such form and manner as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. — Act of August 28, 1894, § 29.

setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized; guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: And all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of * * • the income of such

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minors or persons as may be held in trust, as aforesaid. — Act of July 1, 1862, § 93.

And all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or in other fiduciary capacity, to make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor in the district in which he resides, of the amount of * * • the income of minors or persons as may be held in trust as aforesaid.— Act of June 30, 1864, § 118.

And all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardian or trustee resides, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee. — Act of March 3, 1865, § 1.

And all guardians and trustees, executors and administrators, or any person acting in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such person acting in a fiduciary capacity resides, of the amount of income, gains, and profits of any minor or person for whom they act. — Act of March 2, 1867, § 13.

And every guardian and trustee, executor and administrator, and any person acting in any other fiduciary capacity, or as resident agent for, or

copartner of any non-resident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts.— Act of July 14, 1870, § 11.

And all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains and profits of any minor or persons for whom they act. — Act of August 28, 1894, § 29.

When a decedent dies, his legal representatives must make the return of income accruing before his death and within the year.

Mandellv. Pierce, 3 CM. 134, Fed. Cas. Wo. 9,008 (1868), U. S. Cir. Ct., Dist. Mass., Clifford, J.

A guardian residing abroad should return the income of his ward in the district where the ward resides, but a guardian not residing abroad should return the income of his ward in the district where such guardian resides.

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KuHng, 3 Int. Eev. Eec. 172.

If a minor is under guardianship, the guardian must return the income. If there is no guardian the father is responsible for such return, and if he has the legal control of such income, he must return it with his own.

Euling, 2 Int. Eev. Eec. 68.

A minor, if he have no guardian, should make return himself. If he refuses, an independent assessment should be made as in other cases, without penalty.

Euling, 7 Int. Eev. Eec. 59.

If the partners or agents of aliens residing abroad can take the oath prescribed, that they have made the proper returns and paid tax in the district where they reside, the collector will not require any further return.

Euling, 7 Int. Eev. Eec. 10.

Provided, That a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will

or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph; and also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen:

Provided, that any party in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of

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this act, or that he or she has been assessed elsewhere and the same year for [and has paid - ^Act of June 30, 1864] an income duty, under authority of the United States.- Act of July 1, 1862, § 93; Act of June 30, 1864, § 118.

Provided, that any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of six hundred [one thousand - Act of March 2, 1867] dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty [tax - ^Act of March 2, 1867] elsewhere in the same year, under authority of the United States, upon his or her gains and profits, as prescribed by law. - Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

Any person, in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or upon those of his ward, beneficiary, or principal, as required by law. - Act of July 14, 1870, § 13.

Provided, that any person or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirma-

tion, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary, was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits, for which he, she, or it is liable as such fiduciary, as prescribed by law. — Act of August 28, 1894, § 29.

And shall thereupon be exempt from an income duty. — Act of July 1, 1862, § 93.

And shall thereupon be exempt from an income duty in said district. — Act of June 30, 1864, § 118.

And if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty [tax — Act of March 2, 1867] in said district. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

And if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in the said district.— Act of July 14, 1870, § 13.

And if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt

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from income tax in the said district for that year. — Act of August 28, 1894, § 29. .

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax thereon imposed by this section, and shall pay to the officer of the United States government authorized to receive the same; and they are each hereby made personally liable for such tax. — infra.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduc and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor. - Act of June 30, 1864, § 120.

Income due partnerships is not subject to deduction at the source.

Opinion of Attorney-General McEynolds February 12, 1914.

Ruled that individual members of a firm are obliged to pay a tax upon their respective shares of such parts of the net profits of the partnership as are derived from securities exempted by the statute.

T. D. 1957. But see Tr. Eeg. 14, 47.

Provided further, that in either case above mentioned no return of income not exceeding \$3,000 shall be required: Provided further, that any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, Not including partnerships. - Act of August 28, 1894, § 32.

and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any Such firm, when requested by the Commissioner of Internal Revenue, or any district Foster Income Tax. - 41.

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collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed; Provided further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided. Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of \$3,000 shall be made in the case of any such person.

Nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which tire return of his income is due, either file with the person who is required to withhold and pay tax for him a, true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: Provided further, That if such person is a, minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: - infra.

In computing net income for the purpose of the income tax there shall be allowed as deductions: • • * seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association or insurance company which is taxable upon its net income as hereinafter provided. - B supra. Every person liable for the additional tax shall, for the purpose of its assessment and collection, make a return of his total net income from all sources, corproate and otherwise. - A subd. 2, supra.

In computing net income for the purpose of the annual tax there shall be allowed as deduction: * * * eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax, upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of \$3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person. - B supra.

Ev«ry person subject to this additional tax shall, for the purpose of

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its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise. - ^A supra.

The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. A true and accurate return, under oath or aflBrmation shall be made, - supra.

If the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due

notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly.

And the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated. — Act of July 1, 1862, § 93; Act of June 30, 1864, § 118.

And may increase the amount of any list or return, if he has reason to believe that the same is understated. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

And may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated. — Act of July 14, 1870, § 11.

And may increase the amount of any list or return, if he has reason to believe that the same is understated.— Act of August 28, 1894, § 29.

Or, if the list or return of any party shall have been increased by the assistant assessor in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income or the amount held in trust, as aforesaid, liable to be assessed as aforesaid. — Act of July 1, 1862, § 93.

Or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, such party may be permitted to declare, under oath or affirmation, the amount of annual income, or the amount held in trust, as aforesaid, liable to be assessed. — Act of June 30, 1864, § 118.

Or, if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts and be permitted to prove and declare, under oath or affirmation, the amount of income liable to be assessed. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

When the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed. — Act of July 14, 1870, § 12.

And the same so declared shall be received as the suras upon virhichi duties are to be assessed and collected. — Act of July 1, 1862, § 93.

And the same, so declared, shall be received by such assistant assessor as true and as the sum upon which duties are to be assessed and col*

lected, except that the deductions claimed in such cases shall not be made or allowed until approved by the assistant assessor. — ^Act of June 30, 1864, § 118.

But such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. — Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

But such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such cases shall be allowed until approved by the assistant assessor. — ^Act of July 14, 1870, § 12.

Or if the list or return of any person or corporation, company, or association shall have been increased by the collector, or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed. But such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector.— Act of August 28, 1894, § 29.

A preliminary injunction will not be granted to restrain the collector from increasing the assessment under the Act of July 1, 1862, when the oath required by § 93 of that act had not been made and the plaintiff did not excuse his neglect by showing fraud, accident, or mistake.

Magee v. Denton, 5 Blatchf. 130, Fed. Gas. No. 8,943 (1863), U. S. Cir. Ct., S. Dist. N. Y., Hall, J.

If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.

But any person feeling aggrieved by the decision of the assistant assessor in such cases, may appeal to the assessor of the district, and his decision thereon shall be final; and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue. — Act of June 30, 1864, § 118.

Any person feeling aggrieved by the decision of the district assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue.— Act of March 3, 1865, § 1; Act of March 2, 1867, § 13.

Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the Commissioner of Internal Revenue. — ^Act of July 14, 1870, § 12.

Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final.

If dissatisfied with the decision of the collector such person or corporation, company, or association may submit the case with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.— Act of Aug. 28, 1894, § 29.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: Provided, that the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit. — Act of August 28, 1894, § 29.

A State statute provided that the board of levee inspectors should hear and decide all questions as to the assessment of a tax and the additions or deductions from the same "whose decisions thereupon be final." Held, that this did not deprive the courts of jurisdiction to review a decision when its propriety was questioned in a suit at law.

McGhee v. Mathis, 21 Ark. 40, 55 (1860).

Congress has the power to provide that "the dutiable value" of imports shall be determined by a board of general appraisers or "legislative referees," and to provide that their decision thereupon shall be "final and conclusive as to the dutiable value of such merchandise against all parties interested therein," and in such case the courts will not review their decision in the absence of fraud when they acted within their jurisdiction.

Passavant v. U. S. 148 U. S. 214, 219, 37 L. ed. 426, 428, 12 Sup. Ct. Eep. 572 (1892), Jackson, J.

Eamshaw v. T.J. S. 146 U. S. 60, 36 L. ed. 887, 13 Sup. Ct. Rep. 14 (1892), Brown, J.

Hilton V. Merritt, 110 U. S. 97, 28 L. ed. 83, 3 Sup. Ct. Rep. 548 (1884), Woods, J.

" 'Final' is defined in Burrill's Law Dictionary (Part 1, page 627) to be that which terminates or ends a matter or proceeding, not absolutely, however, as the final judgment of an inferior court admits of an appeal."

Eondeau v. Beaumette, 4 Minn. 224, 228, Gil. 163 (1860).

Where a statute declares that the decision of an inferior tribunal shall be "final and conclusive," an appeal will lie. (See, however, Clarke v. Patterson, 6 Binn. (Pa.) 128.) But the proceeding may be attacked collaterally for want of jurisdiction (Ackerman v. Taylor, 9 K J. L. (4 Halst.) 65), and for fraud, or, in some cases, for mistake or irregularity.

Matter of Application of Mayor, etc. of ISTew York, 49 N. Y. 150 (1872).

Congress has the power to provide that an action will lie against a collector to recover taxes collected by him under an erroneous assessment not absolutely void, which he has paid into the treasury.

Cary v. Curtis, 3 How. 236, 242, 245, 11 L. ed. 576, 581 (1845).

Where the statute (U. S. Eev. Stat. § 2931) provided that the decision of the collector and appraiser should be "final and conclusive." Held, this "meant a valid liquidation — not a void liquidation. If merely erroneous, the liquidation will be valid and binding here ; but, if void, that fact may be shown as a defense."

U. S. v. Thurber, 28 Fed. 56 (1886), U. S. Dist. Ct., S. Dist. IST. Y., Beown, J.

The imposition of an import duty on domestic goods would be void.

Ibid. p. 57.

An appraisal without an examination would be void, "because an examination is a condition of the lawful exercise of his power."

Ibid.

An advancement of the valuation of the collector and a

liquidation of duties by Mm without any valuation by the appraiser would be void "although the collector had a general jurisdiction of the subject matter. It would be void because such an appraisement by the collector without any act of the appraiser would be illegal."

Ibid.

An appeal to the Commissioner of Internal Revenue was held to be a waiver of defects in the notice of assessment.

Bailey v. Railroad Co. 22 Wall. 604, 22 L. ed. 840 (1874), IT. S. Supreme, Cliffoed, J.

A defendant claiming a credit which was not presented to the accounting officers of the treasury and passed upon by them under Eev. Stat. §§ 951, 3220 (TJ. S. Comp. Stat. pp. 695, 2086) cannot set it up in an action by the United States to recover taxes.

Railroad Co. v. U. S., 101 U. S. 543, 25 L. ed. 1068 (1879), Waite, C. J.

E. That all assessments shall be made by the Commissioner of Internal Revenue

The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, the determinations, and assessments of all taxes and penalties imposed by this Title [XXXV. - Internal Revenue], or accruing under any former Internal-Revenue Act where such taxes have not been duly paid by stamp at the time and in the manner provided by law.- U. S. Rev. Stat. § 3182 (U. S. Comp. Stat. 1901, p. 2071) .

and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June,
The tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of July, eighteen hundred and sixty-two. - Act of Aug. 5, 1861, § 51.

That the duties on incomes herein imposed shall be due and payable on or before the thirtieth day of June eighteen hundred and sixty-three and in each year thereafter until and including the year eighteen hundred and sixty-six and no longer. - Act of July 1, 1862, § 92.

The duties [taxes - Act of July 13, 1866,] on incomes herein imposed shall be levied on the first day of May, and be due and payable on or

before the thirtieth day of June, in each year until and including the year eighteen hundred and seventy and no longer. — Act of June 30, 1864, § 119; Act of July 13, 1866, § 1.

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The taxes on incomes herein imposed shall be levied on the first day of March and be due and payable on or before the thirtieth day of April in each year, until and including the year eighteen hundred and seventy and no longer. — Act of March 2, 1867, § 13.

The tax hereinbefore provided shall be * * * levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years. — Act of July 14, 1870, § 10.

The taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year. — Act of August 28, 1894, § 30.

except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; And in case of neglect or refusal to make such return, the assessor or assistant assessors shall assess the amount of his or her income. — Act of July 1, 1862, § 93.

And in case of neglect or refusal to make such return the assessor or assistant assessor shall assess the amount of his or her income, and the duty thereon, in the same manner as is provided for in other cases of neglect and refusal to furnish lists or returns in the provisions of this act, where not otherwise incompatible. — Act of June 30, 1864, § 118.

And in case any person, guardian, or trustee shall neglect or refuse to make and render such lists or returns, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts, or any other evidence. — Act of March 3, 1865, § 1.

And in case any such person shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, his books, accounts, or other evidence. — Act of March 2, 1867, § 13.

In case any person having a gross income as above, of two thousand

dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or the assistant assessor shall make such return according to the best information he can obtain by the examination of said person, or of his books, or accounts, or by any other evidence. — Act of July 14, 1870, § 11

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And in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a wilfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence. — Act of August 28, 1894.

It was held in Alabama that there is no remedy to correct the mistake of a state assessor honestly made in determining^ the annual income, when the taxpayer refuses to make the return required by law. To save his rights the taxpayer should make a proper return under protest.

Lott V. Hubbard, 44 Ala. 593 (1870).

In re Lippman, 3 Ben. 95, Fed. Cas. No. 8,382 (1868), U. S. Dist. Ct. S. Dist. N. Y. Blatchford, J., *semhle* at p. 98,

and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amoimt of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

AH persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, eigents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries^ wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations cind joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as

will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax. In all cases where the in-

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come tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300; nor shall any person under the forgoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him: Provided further, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete: Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds, and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to \$3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government;

And also all persons, firms, companies, copartnerships, corporations, joint stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical

gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown. Provided, That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: Provided further, That in either case above mentioned no return of income not exceeding \$3,000 shall be required. D, supra.

That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments, made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt. — Subsection J, supra.

That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall be payable, to stockholders, policy holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specifically incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor. — Act of June 30, 1864, § 320.

And be it further enacted. That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more

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years after date, upon -which interest is stipulated to be paid, or coupon:* representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits- of such company carried to the account of any fund, or used for construc- tion, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the sami^ shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons ami dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of sai* company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebted- ness so held by any person or party whatever, except where said companies may have contracted otherwise." - Act of June 30, 1864, § 122.

And the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an expresa contract. - Act of July 14, 1870, § 15.

And it shall be the duty of all paymasters and all disbursing officer* under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settlinjj and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and en- tered as part of the internal duties; and the pay-roll, receipts, or accounts of officers, or persons paying such duty, as aforesaid, shall be made to' exhibit the fact of such payment. - Act of July 1, 1862, § 86.

And it shall be the duty of all paymasters, and [all - ^Act of July 13, 1866} disbursing officers, under the government of the United States, or [per- sons - Act of July 13, 1866] in the employ thereof, when making any pay- ments to officers and persons as aforesaid, or upon settling and adjust- ing the accounts of such officers, and [or - Act of July 13, 1866] persons, to deduct and withhold the aforesaid duty of five per centum, and shall at the same time make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid,

shall be made to exhibit the fact of such payment. — Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

And it shall be made the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing

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officer, or when settling or adjusting the accounts of any such officer, to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the Commissioner of Internal Revenue. — Act of June 30, 1864, § 123; Act of July 13, 1866, § 1.

Provided, that payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.— Act of June 30, 1864, § 123; Act of July 13, 1866, § 1; Act of March 2, 1867, § 13.

And it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers, or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of five per centum, and the pay-roll, receipts, or account of such officers, or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. — Act of March 2, 1867, § 13.

Provided further, that this section shall not apply to payments made to mechanics or laborers employed upon public works. — Act of July 13, 1866, § 1; Act of March 2, 1867, § 13.

And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the treasurer of the United States, or other officer authorized to receive the same. — Act of March 2, 1867, § 13.

And provided further, that in case it should become necessary for showing the true receipts of the government under the operation of this section, upon the books of the Treasury Department, the requisite amount may be carried from unappropriated moneys in the treasury to the credit of said account; and this section shall take effect upon salary and compensation for the month of March, eighteen hundred and sixty-seven. — Act of March 2, 1867, § 13.

And it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay-roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit "the fact of such payment.

And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasury of the United States, or other officer authorized to receive the same.

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Every corporation which pays an employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district, and said employee shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars. — Act of August 28, 1894, § 33.

The practice of the Chancery Masters, with regard to claims by creditors in the administration of insolvent estates, was to allow creditors to prove for the amount of the principal of their debts with interest (less income tax), on debts carrying interest by law, to the date of the judgment or order for administration. The interest (less tax) and any costs allowed, were added to the principal, and dividends were calculated on the total amount. The income tax so deducted was not accounted for to the revenue, because, until the principal sums were paid, it was considered that no income tax was in fact payable. Under the form of order approved by Kekewich, J., a creditor was allowed to prove for the balance of principal outstanding with interest thereon to the date of the judgment, without any deduction in respect of income tax. From each payment on account of interest, income tax was to be deducted thereon at the rate current at the time of the payment, and such income tax was to be transferred to the account of the Commissioners of Inland Revenue at the Bank of England.

In re Green, Ball & Ellis [1904] W. N. 78, 105.

In an action for rent the tenant may plead as to part, that he has paid the landlord's property tax to that amount, in respect of the rent due to the plaintiff claimed by the declaration, after he has in fact paid the tax.

Tincler v. Prentice (1812), 4 Taunt. 549.

In an action for rent, the tenant, having paid the property tax before action brought, has an undoubted right to deduct it at the trial.

Baker v. Davis [1813], 3 Campb. 474.

In an action for rent, to entitle the tenant to deduct the property tax, it is sufficient to prove the payments to the collector, without producing the assessment.

Philips v. Beer (1815), 4 Campb. 266.

The assignee of a term gave up at Michaelmas, to a second assignee, the occupation of a house, and afterwards paid three

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quarters of a year's property tax, due at Michaelmas, and handed over the receipt to the succeeding occupier : Held, that the succeeding occupier, paying two quarters of a year's rent accruing at the following Christmas, might tender in part of his rent the receipt for property tax given to the former occupier, and might plead it as a payment made by himself.

Clennel v. Eead, (1816), 7 Taunt. 50.

An occupier of lands having, during a course of twelve years, paid to the collector of taxes the landlord's property tax, and the full rent as it became due to the landlord, without claiming any deduction on account of the tax so paid, it was held that the occupier could not recover back from the landlord any part of the property tax so paid.

Denby v. Moore (1817), 1 Barn. & Aid. 123, 15 Eng. Kul. Cas. 322.

Where a tenant pays property tax assessed on the premises, and omits to deduct it on his next payment of rent, he cannot afterwards recover the amount as money paid to the use of the landlord.

Gumming v. Bedborough [1846], 15 Mees. & W. 438.

A tenant has a right to deduct from his rent, the amount of the property tax assessed upon and paid by him in respect of his landlord, although the landlord is not, in fact, liable to be assessed, and has, before the payment, claimed exemption, and that exemption has been subsequently allowed.

Swatman v. Ambler (1854), 8 Exch. 72, 24 L. J. Exch. K S. • 185.

By the Income Tax Act, 1842, 560, Schedule (a) No. IV. (ninth) the defendant, as tenant, at a rent of £100 per annum, of licensed premises, of which the plaintiffs were the landlords, was entitled to deduct from the "rent payable" to the landlord a sum in respect of landlord's property tax equal to 1s. in the pound on such rent. Under section 3 sub-section 3 and Schedule II. of the Licensing Act 1904, he had previously deducted from the rent the sum of £14 part of a sum of £20 paid by him under sub-section 1, as contribution to the compensation fund created by that act. Held, that he was entitled in respect of his payment of landlord's property tax to deduct a sum based on the full rent of £100 and not on that rent less the sum of

£14.

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Hancock & Co. v. Gillard, 76 L. J. K B. N. s. 20 [1907]
i K. B. 47, 95 L. T. IST. S. 680, 71 J. P. 9, 23 Times L. R. 12.

BIGHAM, J.

A provision in a lease, that so long as any tax upon property or income should be imposed, the lessee should pay further rents depending on the amount of the tax, was held not to be illegal.

Beadel v. Pitt (1865), 11 L. T. W. S. 592, 13 Week. Rep. -287.

An agreement that, if the tenant would continue to pay his rent in full, without any deduction in respect of the landlord's property tax paid by him, the landlord would repay to the tenant all sums which he had paid, or should pay, for landlord's property tax, was held not to be invalid as being contrary to the provisions of the British Act.

Per Brett, L. J. (1879), L. R. 4 Q. B. Div. p. 609.

A lessor demised to a colliery company, for the term of ninety-nine years, all the mines and minerals or seams of coal, the iron-stone, iron-ore and fireclay lying within and under certain lands, containing an area of 145 acres 3 roods 3 perches, or thereabouts, at the minimum yearly rent of £60 per annum for the first four years, and thereafter at £80 per annum, or, in the option of the lessor, at the rents or royalties therein mentioned, based on the minerals worked or gotten by the lessees. The surface of the land was not comprised in the lease, but had been let by the lessor to another tenant for ordinary farming purposes, and such tenant was duly assessed to income tax under Sched. (A.) as occupier thereof. No assessment to income tax had been made in respect of the said mineral seams[^] etc[^] beneath the land. No mineral working or borings had taken place under or upon the land, but the mineral field of which the minerals formed part, had been bored by the lessees of the minerals. The mining operations of the company, however, had not reached the stage of the production of minerals. For each of the two years of assessment, being the first two years of the lease, the lessees had paid the lessor the minimum rate of £60, and upon payment thereof had deducted income tax, and the tax so deducted had not been paid over to the revenue. In the formation of the colliery, the company had also acquired and possessed certain freehold lands, the surface of which had been let by them to tenants for agricultural purposes. These

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tenants had paid income tax under Sched. (A.) on these lands, and deducted the tax from the rent paid to the company. The taxed rents so received by the company constituted the sole income of the company chargeable under the Income Tax Acts. No assessment had been made on the company in respect of the colliery or any mines : Held, by Hamilton, J., that the lessor was assessable in respect of the rents received by him from the company, under Sched. (A.), No. II., r. 6, and that the company was not assessable as occupier under Sched. (A.), No. I., and, further, that the rents received by the lessor were not "annuities," or annual payments ejusdem generis with annuities and yearly interest of money, within § 102 of the British Income Tax Act, 1842, or "annuities" within § 24 (3) of the Customs and Inland Revenue Act 1888.

Hill V. Gregory [1912], 2 K. B. 61, 81 L. J. K. B. N. S. 730, 106 L. T. N. S. 603, 6 Tax Cas. 39.

The plaintiff, in consideration of £1,380 to be paid by instalments, granted and sold to the defendant a mine of coal for a term of fifty years; and the defendant covenanted with the plaintiff to pay him £150 down and £150 per year after that time, whether a quantity of coal equal to that amount should be got out of the mine or not ; and when, in any year, so many coals should be got out of the mine as would amount to more than £150 per year, then, that the defendant would pay for every Lancashire acre of coal the sum of £100, until the sum of £1,380 should be paid. The defendant, who had never worked the mine, claimed to deduct from a half-yearly instalment a sum paid by him for income tax. Held, that the instalment of £150 per year, was not "rent" within meaning of § 60 of the Income Tax Act, 1842 (5 & 6 Vict. chap. 35) ; and that assuming it to be an "annual payment" within the meaning of § 102, the plaintiff, and not defendant, was liable to be assessed to the income tax.

Taylor v. Evans (1856), 25 L. J. Exch. N. S. 269, 1 Hurlst. & N. 101.

By agreement between the plaintiffs and the defendants' predecessors, and by an assignment from the latter, the defendants acquired the exclusive right of selling and manufacturing

articles by a secret process, and were to pay to the plaintiffs, Foster Income Tax. - 42.

for forty years, 8 per cent, on the gross receipts of such salesw

The plaintiffs resided abroad and were foreigners. Before paying the amount due under the contract to the plaintiffs, the defendants deducted the income tax payable thereon : Held, that they were entitled to do so, and that the payment was an annuity or annual payment payable out of profits or gains. Per Phillimore, J. 92 L. T. IST. S. p. 683. The defendants "were compelled by the Crown, and as it seems to me rightly compelled by the Crown, to pay on their net profits, without deducting the sum of money which they had to pay away as the 8 per cent. Rightly were they so compelled, because that sum' of money was, at any rate as between the Crown and the taxpayers, to be viewed as no deduction from profits, but as part payment in the way of capital expenditure, for the article originally bought, out of which they made their profit."

Delage v. ISTugget Polish Co. (1905), 92 K T. IST. S. 682, 21 Times L. E. 454.

The total income of the appellant company of a quinquennial period was 2,515,1131. of this 1,710,3821. was derived from premiums and other sources brought into charge 804,7311. consisted, of interest dividends, and rents from which income tax was deducted from the payments made. During the same period 218,-4631. was paid to purchasers. From this same income tax was deducted by the company: - Held that the company were entitled to retain the whole of the tax which had been so deducted from the annuities.

London County Council v. Attorney General, 70 L. J. K^

B.]Sr. S. 77 (1901) A. C. 26; applied in

Edinburgh Life Assurance Co. v. Lord Advocate (1910), A..

C. 143, 79 L. J. P. C. K S. 41, 101 L. T. K S. 826, 5 Tax Cases 472.

A firm acting as underwriters, both in their own name and for other persons, under a mandate, by which they were authorized, as agents for these persons, to underwrite in their names and for their account a sum not exceeding a certain amount on each risk, on such terms as the firm thought fit. The firm under their contract at the end of each year drew out a statement of the balance of profit and loss on the underwriting transactions- on behalf of each of the persons for whom they underwrote^

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and if there was a balance of profit handed it over to him, under deduction of a commission and of a sum which, it was stipulated, should remain in their hands as security : Held - on the construction of sections 42 and 51 of the Income Tax Act 1842 that the firm were bound to deliver to the assessor of income tax a list of the persons for whom they conducted the business of underwriting, with the names and addresses of such persons, and

to include in such lists the amount of profit belonging to each person.

By a mortgage which recited that the mortgagor was indebted to the mortgagee, and it had been agreed that payment of the debt should be postponed, the mortgagor covenanted to pay on the death of himself or his son, whichever should first happen the amount of the debt with simple interest, and if the aggregate amount of such sum and interest should not then be paid, the mortgagor should pay to the mortgagee interest for such aggregate sum by equal half-yearly payments, the first of such payments to become due six months after the death of the mortgagor or his son. The mortgagor died before his son, and the debt, with simple interest, became thereupon payable: - Held, that the mortgagor's legal personal representative, on payment of the debt and interest, might deduct income tax on the interest.

Bebb v. Bunny (1 Kay & J. 216) applied.

Goslings and Sharpe v, Blake (58 L. J. Q. B. JST. S. 446, L. E. 23 Q. B. Div. 324) distinguished. Craven's Mortgage In re: Davies v. Crava, 76 L. J. Ch. IST. S. 651 [1907] 2 Ch. 448, 97 L. T. IST. S. 475, Wabjrington, J.

The annuities granted by an assurance company are payable out of the whole income of the company - both that portion thereof which is brought into charge for income tax and that from which income tax is deducted at the source.

Edinburg Life Assurance Co. v. Lord Advocate, 79 L. J. P. C.]Sr. S. 41 [1910] A. C. 143, 101 L. T. K S. 826, 54 Sol. Jo. 133, 26 Times L. E. 146, H. L. (Sc.)

The plaintiff, who was the owner of a term of years in a certain property, which was let for the whole term less twenty-one days at an annual gross rental of £1,925 entered into two contemporaneous deeds with the defendants, who were his sub-lessees. By the first deed he assigned to the defendants his re-

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version in the property in consideration of £1,000 and the deed of covenant of even date. By the latter deed the defendants covenanted to pay the plaintiff the annual sum of £1,000 which was the net rent the plaintiff had previously received from the property. No gross sum was fixed upon as the purchase price of the property. The defendants having in making these annual payments of £1,625 deducted income tax therefrom, the plaintiff sought to recover the sums so deducted : Held, that the defendants were right in deducting income tax from the annual payments as falling within section 40 of the Income Tax Act 1853.

Chadwick v. Pearl Life Assurance Co. 74 L. J. K. B. N. S. <571 [1905] 2 K. B. 507, 93 L. T. K S. 25, 54 Week. Eep.

78, 21 Times L. E. 456. Walton, J.

By marriage settlement, a husband contracted to pay his wife, should she survive him, "a free life-rent annuity of £1,200 sterling, exempted from all burdens and deductions whatsoever : " Held, that the tax might be deducted ; even if such a contract implied a covenant not to deduct the tax, it was void under § 103 of the British Income Tax Act, 1842.

Blair v. Allen (1858), 21 Dunlop, 15, 31 Scot. Jur. 1.

Under a deed of separation, a husband bound himself to pay to his wife a free yearly allowance of £1,000. His whole income consisted of an annuity of £3,000 paid to him free of tax, by his father, and of sums voluntarily paid by his father. The husband deducted income tax before paying the annuity to his wife : Held, that he was entitled to do so, as it was payable as a personal debt or obligation in virtue of a contract; the question whether he was bound to account for it to the Crown, was a question between him and the Crown, with which the wife had no concern.

Dalrymple v. Dalrymple (1902), 4 F. 545, 39 Scot L. E. 348.

A public body, which issues stock on which it pays dividends after deducting tax, and also owns and occupies premises for its own purposes on which it pays tax under Schedule A of the Income Tax Act 1842, is not entitled to recoup itself for this tax out of the tax deducted from the dividends on the stock.

Attorney-General v. London County Council, 76 L. J. K. B.

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N. S. 464, [1907] A. C. 131, 96 L. T. K S. 481, 11 J. P. 217, L. Q. E. 465, 23 Times L. K. 390— H. L. (e).

A gas company was prohibited by its special Act from paying dividends to its shareholders above a fixed rate per annum. The company claimed to deduct the amount of the income tax from its gross profits before paying any dividend, and then to pay the dividend in full to the shareholders : Held, that the company was not entitled to do so, and that in arriving at the rate of dividend, the profits ought to be calculated as inclusive, and not exclusive, of the amount payable in respect of income tax:

Ashton Gas Co. v. Attorney-General [1906], A. O. 10[^] 75 L. J. Ch. N. S. 1, 93 L. T. N. S. 676.

The London County Council borrowed large sums of money by the issue of stock which, together with the dividends thereon,, was specifically charged on the lands, rents, rates, and all other property of the Council, and in paying dividends on the stock

deducted income tax pursuant to section 24, sub-section 3 of the Customs and Inland Revenue Act, 1888. The council also owned land, which they occupied for the purpose of their duties, and paid income tax under Schedule A. upon its annual value. The interest on the stock issued was greater than the amount received from rents and interests on loans together with the annual value of the lands -which they owned and occupied, and the Council raised the amount by which their income was insufficient to pay the interest on the stocks by rates : Held, that the Council were entitled to retain out of the income tax deducted from the dividends upon the stock a sum equivalent to the income tax paid under Schedule A. on the income they derived from rents and under Schedule D. on the income they derived from interest on loans.

Attorney-General v. London County Council, 74 L. J. K.

B. N. S. 787 [1905], 2 K B. 375, 93 L. T. K S. '378, 53 Week.. Eep. 677, 3 L. G. E. 951, 69 J. P. 333, 21 Times L. E.. 604..

C. A.

Mortgage Interest, etc. Bankers had a mortgage for a fixed sum, and a banking account with their customer : Held, that although in dealings between merchants, in discounting bills and the like, and on loans made for short periods, the income tax was not deducted, yet, in a mortgage transaction, the mortgagor

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was entitled to deduct income tax. Per Sir John Bomillt, M. E. 32 Beav. p. 273: "It is necessary, in all these cases, to distinguish between what is a banking account, as between banker and customer, and what is an account as between mortgagor and mortgagee. . . ." (P. 276) : "In all cases of mortgagor and mortgagee, when the court has once arrived at the conclusion that it is a case of mortgagor and mortgagee, the mortgagor is entitled to deduct the income tax from the interest paid to the mortgagee, which he necessarily has paid on the property mortgaged, either in the shape of deduction from his rents, or from his dividends prior to that period, and, accordingly, this is so provided by the Act."

Mosse V. Salt (1863), 32 Beav. 269, 32 L. J. Ch. IST. S. 756.

A railway company, whose undertaking yielded no profit, paid annually interest on its share capital and debenture stock, and made a return of the amount so paid in the year previous to the year of assessment, and was assessed thereon. The amount paid in the year of assessment having been greater than the amount of the previous year, the company was held liable in respect of the difference, which had been deducted by them on paying the interest, as a debt due to the Crown under the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. chap. 8),

§ 24 (3).

Lord Advocate v. Forth Bridge Bail. Co. [1890] 28 Scot.
L. B. 576, 3 Tax Cas. 1.

A debenture trust deed provided for payment of arrears of interest before principal. On the commencement of a debenture holder's action, an order of court directed that the trusts of the said deed should be carried into effect. The rate of interest under the debentures varied. Orders were from time to time made, directing distribution of the funds in court to the debenture holders, in proportion to the amounts certified to be due to them for interest. Those funds were made up of certain rents and royalties paid to the trustees ; from which income tax had been deducted. Subsequently the whole of the assets and property comprised in the trust deed were sold, and a final distribution was proposed to be made to the debenture holders. The total of the distribution up to that time, amounted to a payment of about 3s. 8|-(?) in the pound of the certified amount

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of interest due, and the proposed final distribution would increase that amount to about 6s. 2d. in the pound. ■ On an application to the court for an order for a final distribution of the funds in court, and that the payments already made to the debenture holders should be treated as payments on account of capital, it was held by Faewell, J., that as the debenture holders did not possess the same interests, and the trust deed provided for payment of interest before principal, the debenture holders could not waive their rights under that provision in the absence of agreement of all the debenture holders, although the provision was inserted in the deed for the benefit of the debenture holders, and any payments to them must be made in accordance with the terms of the deed, and that income tax must be deducted from such payments as had not already borne the tax.

Ee Queensland Land and Coal Co., Limited, Davis v. Martin
(1903) (unreported).

A debenture trust deed executed by a company, provided that the trustees should appropriate the proceeds of the realization of the securities, in the first place towards payment of all arrears of interest on the debentures, and secondly towards payment of the principal. After default, it was ordered, in an action by the debenture holders, that the trusts of the deed should be carried into execution. When practically all the securities had been realized, the trustees had in their hands, after payment of various sums from time to time and of the

costs, a sum of money which it was proposed to pay to the debenture holders. It was claimed on behalf of the Commissioners of Inland Revenue, that these payments should be appropriated to interest, and that income tax should be deducted: Held, on the facts, and on the construction of the orders directing payment, that as it was clearly for the benefit of the debenture holders that the payments should be appropriated to principal, they ought to be so appropriated without putting the payees to their election, and consequently income tax ought not to be deducted.

Smith V. Law Guarantee and Trust Society [1904] 2 Ch. 569, 73 L. J. Ch. N. S. Y33, 91 L. T. K S. 545.

Interest paid to depositors by savings bank is considered a dividend, and the tax should be withheld therefrom, and paid to the Government.

Ruling, 2 Int. Eev. Eec. 36.

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Where a savings bank credits its depositors with interest, the amount thus credited should be treated as a deposit and returned accordingly.

Euling, 2 Int. Eev. Eec. 92.

Under the Act of June 30, 1864, a railroad deducted the income tax from interest due a municipal corporation. Held, that the city could not recover the tax, so deducted, from the corporation. Having neglected to resist the collection of the tax by the United States from the railroad, it was precluded from raising the question of the legality of the tax as against the railroad.

Baltimore v. Baltimore Eailroad, 10 Wall. 543, 19 L. ed. 1043 (1870) U. S. Supreme Ct., Davis, J. And see U. S. v. Eailroad Company, 17 Wall. 322, 21 L. ed. 597 (1872) U. S. Supreme, in which the United States was not allowed to collect the tax from the city.

Under the earlier statutes ruled that in a suit to recover taxes illegally collected, a tax on a fund for the payment of interest to nonresident alien bondholders is an excise tax on the business of the corporation and therefore valid.

In a suit to recover payment of coupons brought by a nonresident alien bondholder, held that the Act of June 30, 1864, was not intended to apply to nonresident aliens, and that therefore the defendant was not entitled to deduct the income tax from the coupons.

"Congress has since, in express terms * * * imposed a tax on alien nonresident bondholders. The question hereafter

will be, not whether the laws embrace the alien nonresident bondholder, but whether it is competent for Congress to impose it, upon which we express no opinion."

Eailroad Co. v. Jackson, 7 Wall. 262, 19 L. ed. 88 (1868) U. S. Supreme, N'elson, J., affirming *Jackson v. North. Cent. E. R.* 2 Int. Eev. Eec. 174, Fed. Cas. 'So. 7,142 (1865) U. S. C. C. D. Md. Chase, C. J.

"Whether Congress having the power to enforce the law, has authority to levy * * * ^ tax on the interest due by a citizen of the United States to one who is not domiciled within our limits, and who owes the Government no allegiance, is a question which we do not think necessary to the decision of this

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Railroad Co. v. Collector, 100 U. S. 595, 25 L. ed. 647 (1879) MiLLEE, J., affirming *Michigan Central Railroad v. Slack*, 22 Int. Rev. Rec. 337, Fed. Cas. No. 9,527 (1876) U. S. Cir. Ct., Dist. Mass., Claek, J.

U, S. V. Erie Railway Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223 (1882) Waite, C. J., reversing *U. S. v. Erie Railway Co.* 24 Int. Rev. Rec. 76, Eed. Cas. No. 15,056 (1878) U. S. D. C. S. D. N. Y., Blatchfoed, J. See concurring opinion by Beadley, J., at p. 703, quoted supra.

Quaere, whether a declaration that except when the company had contracted otherwise it might deduct the tax from interest due nonresident alien bondholders would, as a matter of international law, relieve the company from its obligation to such bondholders ?

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(1879) MiLLEE, J.

The tax was on the fund in the hands of, and belonging to, the corporation, and not on the bondholder.

So held, of interest and dividends accruing and earned in the last year of the tax, but payable the year following, the tax being therefore collectible thereon.

Barnes v. The Railroads, 17 Wall. 294, 21 L. ed. 544 (1872) U. S. Supreme, Cliffoed, J. (Waite, C. J., Steong, Davis, and Field, J J., dissenting.)

Stockdale v. Insurance Cos. 20 Wall. 323, 22 L. ed. 348 (1873) U. S. Supreme, Millee, J.

Semble that under the Act of July 13, 1866, when the corporation has paid its interest in full instead of deducting the tax, the tax falls upon it and not upon the bondholders.

Michigan Central R. R. v. Slack, 22 Int. Rev. Rec. 337, Fed. Cas. No. 9,527 (1876) U. S. C. C. D. Mass., Claek, J.

Contra, of interest paid to a municipal corporation whose income was not taxable, the tax therefore being not collectible thereon.

U. S. V. Railroad Company, 17 Wall. 322, 21 L. ed. 597 (1872) U. S. Supreme, Hunt, J. But see reporters' note and footnote at p. 335. And see Baltimore v. Balumore Railroad, 10 Wall. 543, 19 L. ed. 1043 (1870) U. S. Supreme, in which the city was not allowed to recover from the corporation taxes already paid to the United States.

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Contra, also, where the law of a state directed the corporation to "retain" the tax out of interest, such law being unconstitutional as to nonresident bondholders, because it impaired the obligation of the contract.

State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. ed. 179 (1872) U. S. Supreme, Eield, J., following the judgment in Railroad Co. v. Jackson, 7 Wall. 262, 19 L. ed. 88 (1868) U. S. Supreme, Nelson, J.

But so held, of a fund in the hands of a foreign corporation payable without the state to citizens of the state, such fund not being taxable by the state because not within its jurisdiction.

N. Y. etc. Railroad v. Pennsylvania, 153 U. S. 628, 38 L. ed. 846, 14 Sup. Ct. Rep. 952 (1893) Haelan, J., reversing Commonwealth v. N. Y. etc. R. R. 150 Pa. 234, 24 Atl. 609 (1892).

Contra, also, where the corporation contracted to pay interest without defalcation of taxes, it being permitted to deduct the income tax from the interest due.

Haight v. Railroad Co. 6 Wall. 15, 18 L. ed. 818 (1867) U. S. Supreme, Geise, J., affirming s. c. svb nom. Haight v. Pittsburgh, etc. Railroad Co. 1 Abb. U. S. 81, Fed. Cas. No. 5,903 (1867) U. S. D. C. W. D. Pa., McCandless, J.

Contra, also, of interest payable in the year following the last year of the tax, the tax not being collectible thereon. [The court distinguishes this case from Barnes v. Railroads on the ground that it appeared there expressly that the dividends (nothing being said of the interest in that case) were earned in the last year of the tax, while in the principal case there was no finding as to when the interest was earned, the only finding being that the interest was paid after the tax lapsed.]

Railroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068 (1879)

Waite, C. J.

So held, however, of dividends earned, declared, and paid during the war and within the Confederate lines by a corporation under the jurisdiction of the United States, such dividends being taxable.

Memphis, etc. E. R. v. U. S. 108 U. S. 228, 27 L. ed. 711 (1882) Waite, C. J.

Contra, also, of interest accruing and earned in the last year of the tax, but payable the year following. The tax being

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therefore not collectible. [In this case it appeared expressly "that the interest was paid out of earnings made in the last year ■of the tax, and thus the case falls within the distinction taken ^s to Barnes v. Kailroads in Eailroad Co. v. U. S. 101 U. S. 543, 25 L. ed. 1068, which is relied on as a controlling authority. The court say, at p. 713, "We do not perceive that the liability •of the corporation for tax on this interest, as such, is affected by the circumstance that the interest was paid out of the earnings ■of the previous year." The distinction should probably be regarded as overruled, though the case taking it is followed.]

U. S. V. Indianapolis, etc. E. R. 113 U. S. 711, 28 L. ed. 1140, 5 Sup. Ct. Eep. 724 (1884), Hahlan, J.

An English company claimed a deduction on account of interest paid to non-resident alien bondholders. Held, not allowable.

Alexandria Water Co. v. Musgrave, L. E. 11 Q. B. Div. 174 [1883] Beett, M. R.

"I am unwilling to give an opinion whether the foreign debenture-holder can be made to repay the company, because such debenture-holder is not now before us, but I confess I have a strong suspicion that those who drew this act meant, as far as English legislation can do so, to make him liable ; but whether the foreign debenture-holder can be made to pay or not, that is to say whether the company in paying him can or not deduct the tax, is immaterial. If they can, there is no hardship; if they cannot, the hardship is imposed upon them by the plain terms of the act."

Ibid., Beett, M. E., at p. 179.

and likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed \$3,000, New. See British statutes infra.

Provided, That the provision requiring the normal tax of individuals

do be withheld at the source of the income shall not be construed to re-

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quire any of such tax to be withheld prior to the first day of November, 1913: Provided further, That in either case above mentioned no return, of Income not exceeding \$3,000 shall be required: - Supra in D.

Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages,, or deeds of trust or other similar obligations of corporations, joint-stock, companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not, amount to \$3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income andl paid to the Government; - Supra in E.

The dividends of a foreign company were payable either at its Londoni agency or abroad, at the option of the shareholder. The agency received, no remittance from abroad to pay the dividends demanded of them in London in a particular year, because the agency profits were sufficient for the purpose: Held, that the dividends paid in London were entrusted to the agency for payment, within the meaning of the Income Tax Act, 1853, § 10; but that in assessing the dividends, an allowance should be granted in respect of that portion which arose from the previously taxed profits of the English agency: *Gilbertson v. Ferguson* (1881), 7 Q. B. D. 562; 46 L. T. 10; 1 Tax Cas. 501.

The banking company, which had its head ofiSces in Australia, and. carried on a banlcing business at a, branch office in London, paid interest. on its Interminable Stock. Such interest was payable out of its total profits, including the profits made in the United Kingdom. For the year ending April 5th, 1901, the profits of the London branch amounted to £9,419, on £1,000 of which income tax was paid. During the same period, the company paid, through the London branch, the sum of £68,539,, in respect of interest on Interminable Stock, to certain holders of such stock in the United Kingdom, and upon this sum, income tax was deducted and paid over to the Revenue. The company, by petition of right,, claimed repayment of the income tax paid on the above sum of £1,000. It was held on February 17th, 1909, by Channell, J., in the King's Bench,

Division, that a proportionate part only of the tax on the sum of £1,000' was returnable to the company, as the interest was payable out of the whole profits of the company: Queensland National Bank v. The King: (1909) (unreported).

New. See British statutes infra.

by any banker or person who shall sell or otherwise realize coupons,, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States),, in behalf of another of such dividends and interest by means of coupons, checks or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; All persons, firms, or corporations undertaking as a matter of business.

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or fo» profit the collection of foreign payments of aucli interest or dividends by means of coupons, checks, or bill of exchange shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the duo withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; - Infra in E.

New. See British statutes infra.

but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.

New. See British statutes infra.

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he fihall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: Provided, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300; nor shall any person under the foregoing conditions be allowed the benefit of. any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a, true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made

for him: Provided further, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete. — supra.

All persons, firms, or corporations undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner of Internal Revenue, and! shall be subject to such regulations enabling the government to ascertain and verify the due withholding and payment of the income

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tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without having obtained a license therefore, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding \$5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.

These regulations are printed infra.

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

New. See British statutes infra.

"The defeasance clause of the mortgage was thus : 'Provided, always, that if the said railway company or their successors do well and truly pay to the said Haight, the said \$100,000 on the days and times hereinbefore mentioned, together with the interest payable thereon, without any deduction, defalcation or abatement to be made of anything for or in respect of any taxes, charges or assessments whatsoever, then,' &c. The railway company having retained five per cent, on the amount of the coupons, as they paid them, Haight brought suit against it, contending that it could not deduct the taxes from the interest due him, because it had, in the language of the act of Congress, 'contracted otherwise.' " Held, that the mortgage could deduct from its coupons the five per centum thereof paid to the United States under § 122 of the Act of June 30, 1864.

Haight V. Railroad Co. 6 Wall. 15, 16, 18 L. ed. 818, quoted in full, infra.

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and

regulations to be prescribed by the commissioner of internal revenue and approved by the Secretary of the Treasury. The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of one per centum per annum upon the amount by which the total net income exceeds twenty

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thousand dollars and does not exceed fifty thousand dollars, and two per centum per annum upon the amount by which the total net income exceeds fifty thousand dollars and does not exceed seventy-five thousand dollars, three per centum per annum upon the amount by which the total net income exceeds seventy-five thousand dollars and does not exceed one hundred thousand dollars, four per centum per annum upon the amount by which the total net income exceeds one hundred thousand dollars and does not exceed two hundred and fifty thousand dollars, five per centum per annum upon the amount by which the total net income exceeds two hundred and fifty thousand dollars and does not exceed five hundred thousand dollars, and six per centum per annum upon the amount by which the total net income exceeds five hundred thousand dollars. All the provisions of this section relating to individuals who are to be chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section. — Subsection A, supra.

The rules and regulations are printed infra.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such persons shall be liable to a penalty of not less than \$20 nor more than \$1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000. — Subsection G (d) infra.

In case of any return of a false or fraudulent list or valuation inten-

tionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax.

In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and

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subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes. U. S. Rev. Stat. § 3176 (U. S. Comp. Stat. 1901, p. 2068) as amended by this act. Subsection I.

Only one penalty can be required for all failures to make returns prior to the beginning of the action therefor. So held, also, of failures to pay the tax.

TJ. S. V. Brooklyn, etc. 14 Fed. 284 (1882), U. S. C. Ct. E. Dist. N. Y., Benedict, J.

U. S. V. K Y. Guarantee, etc. Co. 8 Ben. 269, Fed. Gas. No. 15,872 (1875), U. S. Dist. Ct., S. Dist. N. Y. Blatchford, J.

The power of the assessor upon finding the first return to be false to add the penalty is not a judicial power in such a sense as to render the statute conferring it unconstitutional.

In re Brown, 3 Int. Rev. Eec. 134, Fed. Gas. No. 1,977 (1866) TJ. S. Dist. Ct., N. Dist. N. Y., Smalley, J.

Where the returns of a manufacturer are understated, even where no attempt to default the revenue appears, as a general rule the penalty of 50 per cent, should be assessed, and when fraud appears, the specific penalty of fine should be added.

Euling, 3 Int. Rev. Eec. 60.

The fine of 50 per cent, in case of fraudulent or understated returns is to be assessed on the deficiency of the tax withheld, and not on the whole amount of the tax.

Euling, 3 Int. Rev. Eec. 60.

G (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association.

And be it further enacted, That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to

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deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party 'whatever, except where said companies may have contracted otherwise. - Act of June 30, 1864, § 122.

That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or Income of all banks, banking institutions, trust companies, savings institutions, Are, marine, life, and other insurance companies, railroad, canal, turnpike, canal-navigation, slack-water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations. The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations. - Act of August 28, 1894, § 32.

That every corporation, joint stock company, or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any state or territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company, or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed. - Corporation Tax Law, 1909, infra, 3.

Net income of a corporation is liable to taxation whether declared in dividends or not.

Commonwealth v. Ocean Oil Co., 59 Pa. 61, 14 Mor. Min. Eep. 126 (1868).

Semhle that dividends are not net earnings or income and a corporation is taxable on its net earnings, although it declares no dividends and had commuted all taxes on its dividends by the payment of a lump sum.

Jones, etc., Co. v. Commonwealth, 69 Pa. 137 (1871).

Net earnings, whether carried to construction account or Foster Income Tax. - 43.

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devoted to payment of interest on subsidy bonds, issued to the corporation by the United States, are taxable under the Act of June 30, 1864, as amended by the Act of July 13, 1866.

Sioux City, etc., E. E. v. U. S. 110 U. S. 205, 28 L. ed. 120, 3 Sup. Ct. Eep. 565 (1884), Bradley, J.

"Net earnings," as used in a stipulation of counsel, construed to mean "all profits * * * carried to the account of any fund or used for construction."

Ibid.

An oil company was incorporated -with a capital of one million dollars. Held, that the statutory phrase "net earnings or income" meant net income after deducting expenses, but not net income after applying the proceeds of the sale of its oil to the repayment to the stockholders of the capital stock until the capital was repaid.

Commonwealth v. Ocean Oil Co. 59 Pa. 61, 14 Mor. Min. Eep. 126 (1868).

Commonwealth v. Penn Gas Coal Co. 62 Pa. 241, 14 Mor. Min. Eep. 163 (1869).

A tax on gross receipts is not a tax on dividends. So held, where a city sued under a special statute to recover taxes paid on dividends on shares which it owned and it appeared that the corporation had paid only the tax on its gross receipts under § 103 of the Act of June 30, 1864.

Commissioners of Sinking Fund v. Buckner, 48 Fed. 533 (1891), U. S. Cir. Ct., D. Ky., Bare, J.

The profits of a corporation may include a sum distributable to customers instead of to the shareholders. So held, when an insurance company, in consideration of increased premiums paid, agreed to return to the insured two-thirds of whatever "gross-profits" the company should have received from such

premiums at the end of every five years, which two-thirds are taxable.

Last V. London Assurance Co., L. E. 10 App. Cas. 438 (1885), reversing s. c. L. E. 12 Q. B. Div. 389 (1884), Day, J., and L. E. 14 Q. B. Div. 245 (1884).

"The question is very important. * * * jf tijg contention of the Crown is right, income tax will be payable in all cases in which employers have agreed with employed that,

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besides fixed wages, the employed shall receive what is called a share of the profits. The income tax will apply to co-operative soi'ieties strictly so-called, and be payable on a sum falsely called profits, with no deduction of the wages contingently payable to workmen, if gross profits enable them to be paid. * * * I think it would be most disastrous, and most unreasonable."

Ibid. LoED Bramwell, dissenting, at p. 448.

The surplus over expenses of premiums paid in by the members of a mutual insurance company was redistributed to the members. Held, not taxable. Distinguishing Last v. London Assurance Co., L. E. 10 App. Cas. 438 (1885).

N". Y. Life Ins. Co. v. Styles, L. E. 14 App. Cas. 381 (1889), H. L.

"Several persons contribute sums towards a book club to continue for a year. At the end of the year the expenses are less than the fund. Are the amounts returned 'profits' ?"

Ibid., Lord Beamwell, dissenting arguendo, at p. 387.

Profits "used for construction" were distinguished from profits "carried to the account of any fund" in the Act of June 30, 1864; in the Act of July 14, 1870, the latter were included, but the former not. Held, therefore, that profits used for construction were not taxable under that act.

Marquette, etc., E. E. Co. v. U. S., 123 U. S. 722, 31 L. ed. 302, 8 Sup. Ct. Eep. 319 (1887), Waite, C. J., reversing U. S. V. Marquette, etc., E. E., 17 Fed. 719 (1883), U. S. Cir. Ct., W. Dist. Mich. WITHEY, J.

Profits "used for construction" do not include earnings expended in keeping the property up to its normal condition.

So held, of earnings expended in building a stone bridge in place of an old wooden one deemed insecure.

Grant v. Hartford, etc., E. E. 93 U. S. 225, 23 L. ed. 878 (1876), Beadley, J., affirming Hartford, etc., E. E. v. Grant, 9 Blatchf. 542, Fed. Cas. ISTo. 6,159 (1872), U. S. Cir. Ct, Dist. Conn., Shipman, J.

8ed quaere, of the increase in value of the new bridge over the old one ? Ibid.

Semhle, that where the new bridge is more costly that the old, the increase of value is profits used in construction.

Ibid.

Where the increase of value came from a fund devoted to

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general repairs of a plant, so that it is merely "withholding proper expenditure from one portion of the line and devoting it to another," Jieldj, that such expenditure is not part of the ^'profits used in construction."

Ibid.

The declaration of a dividend was conclusive, and the corporation was not allowed to set up a loss, e. g. by embezzlement, which it failed to take into account in declaring the dividend as a defense to an action for taxes on the dividend under a former statute.

• Central National Bank v. U. S., 137 TJ. S. 355, 34 L. ed. 703, 11 Sup. Ct. Rep. 126 (1890), Haelan, J., affirming U. S. v. Central National Bank, 24 Fed. 577 (1885), U. S. Cir. Ct., S. Dist. N. Y., Wallace, J., which reversed s. c, 15 Fed. 222 (1883), U. S. Dist. Ct., S. Dist. N. Y., Beown, J., and see s. c, 10 Fed. 612 (1882), U. S. Dist. Ct, S. Dist. N. Y., Beown, J.

When a tax is on capital stock measured by dividends, the corporation cannot deduct from a declared dividend the amount contributed by stockholders to meet losses.

Columbia Conduit Co. v. Commonwealth, 90 Pa. 307, 14 Mor. Min. Eep. 197 (1879).

"To constitute a cause of action under this section (§ 120 of the Act of June 30, 1864), the complaint is sufficient, if it aver either a dividend declared or the earning of profits, which, instead of being divided, have gone to increase the surplus fund of the corporation."

Benedict, J., in U. S. v. Brooklyn, etc., R. E., 14 Fed. 284

(1884), U. S. Dist. Ct., E. Dist. N. Y.

When a debt is canceled by the consolidation of the debtor and creditor companies, it is paid, but presumably not paid out of earnings or profits, and no tax is collectible thereon.

U. S. V. Louisville, etc., E. E., 33 Fed. 829 (1888), U. S. Cir. Ct., Dist. Ky., Bae, J.

An insurance company granted an annuity in consideration of a lump sum paid at the time of granting the annuity. Held, that the annuities were not "payable out of profits" and therefore not taxable.

Gresham Life Assurance Soc. v. Styles [1892] A. C. 309,

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House of Lords, reversing s. c. L. E. 25 Q. B. Div. 351 (1890), and s. c. L. E. 24 Q. B. D. 500 (1890).

"An annuity to the widow of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

Ibid. Lord Watson, at p. 320.

The insurance company, under its charter, reserved a percentage of its earnings as a fund to meet losses, and issued certificates to its members to the effect that they had a pro rata interest therein. Held, under a law taxing capital, that such a fund was capital.

Sun Mutual Ins. Co. v. The Mayor, 8 N. Y. 241 (1853).

A statute exempting the "stock" of a corporation exempts also the "gross income." Such income undistributed is the property of the corporation.

State ex rel. So. Car. E. Co. v. Hood, 15 Eich. L. 177 (1868), S. Car. Ct. App.

In determining the amount of taxable gains of a corporation under Section 120 of the Act of June 30, 1864, only such losses as were ascertained and settled during the period covered by the return can be deducted.

Euling, 3 Int. Eev. Eec. 100.

In determining the net profits of a national bank under sections 120 and 121, the amount of semi-annual tax on the capital circulation on deposits paid by the bank during the period covered by the returns of such profits, may be deducted the

same as other expenses, but no deduction should be made on account of the tax of five per cent, withheld from dividends paid upon surplus funds.

Euling, 5 Int. Eev. Eec. 74.

In determining the amount of tax upon the net gains of the corporations mentioned in sections 120 and 122, no deduction should be made on account of that part of the earnings, being the interest upon railroad bonds owned by them, upon which a tax has been withheld; or on account of tax withheld by other corporations from dividends payable to them. The law does not authorize any other deduction from the tax on divi-

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dends and surplus profits, net gains, than that for tax once paid by the same corporation on that part of its surplus funds ^which is taken to complete dividends.

Enling, 5 Int. Eev. Eec. 91.

Insurance companies in ascertaining the amount of their taxable gross receipts for premiums and assessments, cannot deduct the amounts paid for re-insurance.

Ruling, 3 Int. Eev. Eec. 13.

Under the Corporation-Tax Law of August 5, 1909, held, that corporations of the following character are not organized for profit, and consequently not subject to the income tax therein imposed: A corporation, the sole purpose of which is to hold title to a single parcel of real estate, subject to a long lease, and to receive and distribute the rents and the proceeds of the disposition of the rents.

Zonne v. Minneapolis Syndicate, 220 T.J. S. 187, 55 L. ed. 428, 31 Sup. Ct. Eep. 361, reported in full infra.

A railroad company which has leased its railroad to another corporation, which operates the same exclusively, when the former maintains its corporate existence, collects and distributes to its stockholders the rentals and dividends from other investments.

McCoach V. Minehill & Schuylkill Haven E. E. Co., 228 T.J. S. 295, 57 L. ed. 2, 33 Sup. Ct. Rep. 419, quoted in full infra.

A corporation organized to own the stock of another company, which has no assets except such stock, its office furniture and a small bank deposit, and transacts no business- except to receive the dividends from the operating company and distribute the same.

U. S. V. Nipissing Mines Co. 206 Fed. 431.

It was further held that an association was not organized for profit and was consequently not subject to the Corporation Income Tax, when it consisted of trustees holding land under a trust for the purpose of buying, improving, holding and selling the same, although they had issued transferable certificates to shareholders.

Eliot V. Freeman, 220 U. S. 178, 55 L. ed. 424, 31 Sup. Ct. Eep. 360.

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Under the Corporation-Tax Law of August 5, 1909, it was held that the following corporations were organized for the purpose of profit and subject to the Corporation Income Tax therein imposed: A company which owns and leases taxicabs and collected rents from the same.

Motor Taximeter Cab Company Case, No. 432 - Flint v. Stone Tracy Co. 220 U. S. 107, 171, 55 L. ed. 389, 421, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

Realty companies formed for the purpose of owning, holding and managing real estate, which leased buildings to different tenants, although one of them transacted no business except the managing and leasing of a hotel.

Cedar Street Company v. Park Realty Company, No. 415 - Flint V. Stone Tracy Co., 220 U. S. 107, 169, 55 L. ed. 389, 420, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

A corporation owning and leasing ore lands, which received from tenants a royalty dependent upon the quantity of ore mined by them.

Mitchell V. Clark Iron Company, No. 446 - Flint v. Stone Tracy Co. 220 U. S. 107, 108, 170, 55 L. ed. 389, 421, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

A wharf company, operating under a charter, authorizing it to acquire lands and flats, to lease, manage and improve the same, and to receive dockage and wharfage.

Cook V. Boston Wharf Company, No. 457 - Flint v. Stone Tracy Co., 220 U. S. 107, 170, 55 L. ed. 389, 421, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912 B, 1312.

A mining company agreed to pay its landlord a royalty on its profits. To secure him, it was agreed that the payments should not fall below a fixed sum, but that if at any time there was a surplus of royalties over such sum, the company might apply that surplus to any previous deficiency of royalties below such sum. Held, that the surplus of a given year was taxable as profits although there was a deficiency upon which it was applicable.

Broughton, etc. Coal Co. v. Kirkpatrick, L. K. 14 Q. B. Div. 491 (1884).

"It is true that in one sense the tax will be paid twice ; but it will not be paid twice by the same person."

Ibid., Geove, J., at p. 498.

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. On November 2, 1895, the S. A. R. granted H. J. S. a concession for the construction of a railway, and the S. A. E. guaranteed to a company -which was formed to take over the railway interest at 4 per cent on its share capital. On October 11, 1899, war having broken out, the line was seized and worked by the British military authorities until the end of the war. On Feb. 18, 1902, the British Government gave notice to expropriate the railway under the terms of the concession. They recognized the validity of the concession and admitted liability to pay all arrears of interest. They paid 97,5061. 16s. lid. as "guaranteed interest on share capital at 4 per cent, per annum from -[^]anuary 1, 1899 to 1[^]ov. 14, 1903" in addition to the other payments on the expropriation. Held, that the 97,5061. 16s. lid. was not a part of a sum paid by the British Government as the price of the company's undertaking that it must be treated as the gross revenue of the company earned as a trading company from Jan. 1, 1901 to Nov. 14, 1903, and that after deducting certain expenses incurred by the company during the same period the benefit of the three years' average must be applied and income tax was payable on one third of the balance only.

Pretoria-Pietersburg Railroad v. Elwood, 98 L. T. N. S. 741 - C. A.

An Indian government for the sake of having a railway through its dominions agreed to pay an English company an annuity of 5 per cent, on its capital, of which the company was to distribute a part as interest on its capital and a part into a sinking fund. Held, the latter part is subject to the income tax.

Nizam's State Ky. Co. v. Wyatt, L. E. 24 Q. B. Div. 548 (1890).

The memorandum . of association of a limited company, a rubber syndicate, set forth that the objects of the company were

(inter alia) first, the acquisition and development of a rubber estate in the Malay Peninsula ; secondly, the acquisition and development of rubber estates there or elsewhere, and the carrying on of the business of manufacturing and trading in rubber ; and thirdly the sale of the whole or any part of the business undertaking and property of the company. The company acquired two estates and expended money on their development : but be-

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fore the estates reached the stage of producing rubber, the company, finding its capital inadequate fully to develop the estates, sold its whole undertaking to a new company at a price which exceeded by 9,0001. the whole sums spent by the selling company in acquiring, and developing the estates : Held, that the business of the company not being the buying and selling of rubber estates but the production of and trading in rubber, this sum of 9,0001. could not be regarded as income assessable for income tax. California Copper Syndicate v. Inland Eevenue, (6 F. 894) distinguished. Assets Co. v. Inland Eevenue (24 K. 578) and Stevens v. Hudson's Bay Co. (25 Times L. E. 709) followed.

Tehran (Johore) Eubber Syndicate v. Farmer [1910] S. C. 906, 5 Tax. Cas. 658, Ct. of Sess.

Annual income "is what passage money and freights this road makes each year; of that an account must be rendered, and on that the per cent, must be estimated." So held, in spite of the objection that the company had leased the whole road and received no income except the rent.

Goldsmith v. Aug-usta, etc. E. E. 62 Ga. 468 (1879).

The defendant's charter provided that it should pay three per cent, of its gross earnings annually to the state, and then read, "for the purpose of ascertaining said earnings, an accurate account shall be kept by the company of all receipts and expenditures on account of the operation of said railroads." Held, that rent for the right to run trains over its lines was not a part of its gross earnings, or receipts on account of the operation of its road^ and need not therefore be included in the account.

State V. St. Paul, etc. E. K. 30 Minn. 311, 15 N. W. 307 (1883).

To hold otherwise would be in the nature of double taxation, as the lesser road would have to pay the same tax on the same property.

Ibid.

and every insurance company,

And every such net income shall be ascertained by deducting from the gross amount of income of such * * * insurance company received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a

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condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any * * * in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (sixth) the amount of interest accrued and paid within the year on its third indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its capital stock outstanding at the close of the year or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a * * * insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; from all sums paid by it within the year for taxes imposed under the authority of the United States, or of any State or Territory thereof, or imposed by the government of any foreign country. G (b) infra.

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not

less than \$20 nor more than \$1,000. Any person or any officer of any

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corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Under the Corporation Tax Law of 1909, held that so-called dividends of a mutual life insurance company working upon the level premium plan, which consisted merely of the portion of the loading of the premium charges in excess of the cost of insurance and were returned annually to policy-holders after the first year, so far as the same were used to reduce subsequent periods, were not "income * * * received," and were, consequently, not subject to the tax.

Mutual Benfifit Life Insurance Co. v. Herold, 198 Fed. 199.

Held, further, that this rule did not apply to a "dividend" declared in the case of a full-paid participating policy, wherein the policy-holder had no further premiums to pay, the dividend constituting a participation in the profits and income of the invested funds of the company. "It seems proper to say that dividends of the kind under consideration should not be confused with dividends declared in the case of a full-paid participating policy, wherein the policy holder has no further premium payments to make. Such payments having been duly met, the policy has become at once a contract of insurance and of investment. The holder participates in the profits and income of the invested funds of the company. His case is, therefore, radically different from that of a policy holder whose dividend represents merely the excess cost of his insurance, which excess at his request, and pursuant to the terms of his policy, has been applied in abatement or reduction of a future premium. But it may be urged that the fund for which the so-called dividends are declared on mutual policies is likewise largely derived from interest on the company's investments, and that this shows that in a real sense such dividends are, after all, declared from the earnings, profits, or income of the company. This proposition might be entitled to weight, were it not for the fact that, in so far as the fund from which such dividends are declared is produced from interest on the company's invested funds, it has

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already been subjected to, and "has paid, taxes under the act in question. Furthermore, while perhaps not illegal, it is in a sense unfair, and therefore presumably contrary to the intention of Congress, as between a mutual company and a stock

company, to tax the dividends in question as income received. The policy holder in a stock company pays a uniform and fixed premium each year. The premium in his case is not 'loaded,' but is presumed to represent cost as nearly as may be for the reason that the stability of his policy is assured by the stock of the company, and not, as in the mutual plan, by premium payments avowedly in excess of the cost of the insurance. It would seem to be fair and equitable, therefore, between the two classes of companies, to tax them upon the premiums actually paid them by their policy holders, and not to tax one class upon premium payments actually received and the other upon payments which at the utmost are only 'constructively received.' "

Ibid. 198 Fed. 199, 212.

Under the British Act, held: "That the surplus premium income of a mutual insurance company, derived from and annually returned to participating policy holders, is not assessable to income tax as profits or gains arising from any profession, trade, or vocation exercised in the United Kingdom."

New York Life Insurance Co. v. Styles, 59 L. J. Q. B. 1ST. S. 291, L. K. 14 App. Cas. 381 (1889).

Per Lord Heeschel : "I am aware that the surplus income with which we are concerned is called 'profits' in the documents of the appellants. But both the learned Lords who formed the majority in Last's Case repudiated the idea that because moneys, which were not in fact profits, are erroneously so called, this would make them 'profits' within the meaning of the Income Tax Acts. I entirely concur. We must look to see whether they are really so or not. Persons who agree to contribute to a common fund for mutual insurance certainly would not in ordinary parlance be regarded as carrying on a trade or vocation for the purpose of earning profit. Let us see how the so-called profit arises. It is due to the premiums which the members are required to pay being in excess of what is necessary to provide for the requisite payments to be made upon the deaths

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of members, and not being, as the case states they were intended to be, commensurate therewith. This may result either from the contributions having, owing to an erroneous estimate or overcaution, been originally fixed at a higher rate than was necessary, or from the death rate being lower than was anticipated. Can it be properly said that, under these circumstances, the association of mutual insurers has earned a profit ? The members contribute for a common object to a fund which is their common property ; it turns out that they have contributed more than is needed, and therefore more than ought to have been contributed by them, for this object; and accordingly their next contribution is reduced by an amount equal to their proportion of this excess. I am at a loss to see how this can be con-

sidered as a 'profit' arising or accruing to them from a trade or vocation which they carry on. It is true the alternative is allowed them of leaving the excess in the common fund, and so increasing their representatives' claim upon it in case of death ; but I cannot think that this makes any difference. Mr. Bremner truly pointed out that, if these so-called bonuses were to be regarded as representing profits, it followed that, if the premiums were trebled, the profits would be increased in proportion."

Ibid.

Per Lord MADSTAGiiTEN : "The rates fixed by the tables are taken as being sufficient to provide for expenses, to meet liabilities, and to leave a margin for contingencies. What is to become of the surplus, if everything goes right ? The practice is to take an account every year of assets and liabilities, and to give the insured the benefit of the surplus, either by way of reduction of premium or by way of addition to the sum insured. It can make no difference in principle whether the surplus is so applied, or paid back in hard cash. In either •case it is nothing but the return of so much of the amount contributed as may be in excess of the amount really required. I do not understand how persons contributing to a common fund in pursuance of a scheme for their mutual benefit, having no dealings or relations with any outside body, can be said to have made a profit when they find that they have overcharged themselves, and that some portion of their contributions may

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be safely refunded. If a profit can be made in that way, there is a field for profitable enterprise, capable, I suppose, of indefinite expansion."

Ibid.

"We think the so-called 'dividends to policy holders' are not 'net earnings or income,' and do not represent such earnings, and that defendant is not liable to tax in respect to them. Notwithstanding the mass of testimony and exhibits on this point, including the ingenious questions of the able counsel on either side, followed by answers from the officers of the company, called as witnesses, not always as clear or intelligent as might have been expected, the facts are few and simple, as we have found them above. It is strenuously contended by the able special counsel for the commonwealth that, because these abatements are entered on the books of the company as 'dividends to policy holders' or 'surplus to policy holders,' they therefore represent net earnings or income, and furnish a measure of the liability of the company to taxation. Whatever these statements may be called, they are in reality what we have stated in the finding of facts. The amounts they represent are mere negative quantities, abstract statements, not of what is, or is to be, received or to 'come in,' but what is not to be received.

The calculations are made for the express purpose of determining how much of the amount which the company might receive shall not be received, and one of the items which make up the apparent amount upon the basis of which this calculation is made is the sum which was abated and not received during the preceding year. In short, the whole proceeding is merely a method by which the books of the company are made to show what would be the actual gross debtor and creditor accounts of the company, if the whole amount of the premiums was collected and a part was afterwards returned to the policy holders, while in fact it is neither collected nor returned. * * * It is a fallacy to suppose that the real nature of the transaction is that the policy holder pays his whole stipulated premium and receives his share of the dividend or distribution of surplus."

Commonwealth v. Penn Mutual Life Insurance Co. 1 Dauphin Co. Rep. (Appellate Branch Common Pleas Pa.) 233.
"The appellant, every year before a premium falls due, de-

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termines how much of the stipulated premium it will exact from the insured. The diminution, whether it be called a 'dividend' or 'surplus,' goes in the abatement of the renewal premium, and the insured pays only the difference. The insurance company, therefore, received, not the full renewal premium, but the difference between the stipulated premium and this dividend or portion of surplus. All that the insurance company receives in cash or otherwise is this difference. * * * The commonwealth is claiming to tax the appellant upon money which it never received at all. The appellant says that it is only required to pay upon money which it receives in cash or otherwise, except that it admits that it is bound to pay the full tax on the original premium receipted for on the face of the policy, without regard to whether it in fact received such premium or not. The answer sets out the course of business of the appellant, and shows what money it has received and what money it has not received, and shows that the difference between it and the commonwealth is that the commonwealth is attempting to charge it for the full amount of premiums stipulated for in the face of the policy, although it "does not exact, and has not the right to exact, such full amount, being required to give to the policy holder the advantage of the dividend or surplus, or whatever it may be called, in the diminution of the nominal premium. * * * Now, the truth is that this overpayment (called 'dividend') is not a dividend in any sense of the term ; nor is the failure of the company to collect the full amount of the premium in after years a credit in any sense of the term. A sum of money applied as a credit can

never be used for the same purpose again. If I owe A. \$50, and he owes me five notes of \$150 each, when I credit him on the first note with the \$50 I owe him, he cannot require me to credit the same sum on the remaining four notes as they fall due. But that is just what the state is insisting on being done in this case. The policy holder makes the overpayment of premium technically called 'loading,' and the company holds this sum and calls it a 'dividend,' and the state says that this is a crediting of the same sum on each of the after-accruing premiums, and should be considered as so much collected each year by the company, and as having been paid 'otherwise' than as

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cash. In order to bring the matter before our minds distinctly, let us assume that in 1900 A. takes out a policy in the appellant company in which the stipulated premium is \$150 per annum, that of this sum \$100 would be sufficient to carry the risk in ordinary times, and that \$50 is what is called 'loading,' collected in order to meet the contingencies of the future. Now, in 1900 the policy holder pays the full amount of the premium, \$150. After that the company says to him, 'You need only pay \$100 per annum; and, as long as the \$50 of over-payment you made in 1900 remains unexhausted, your annual premiums will be really \$100, instead of \$150, as stated in the policy.' The account of five years would be stated as follows :

1900, beginning of the insurance period, premium paid	\$150 00
1901, premium paid	100 00
1902, premium paid	100 00
1903, premium paid	100 00
1904, premium paid	100 00
1905, premium paid	100 00
Total	\$650 00

"Obviously the total amount of money paid by the policy holder and received by the insurance company is \$650, and it has received no more, either in cash or otherwise; and on the sum so received it is conceded that appellant has paid the tax due. If we look only at the method of bookkeeping of the appellant and have regard only to the terms it uses, there is much in the appearance of the case thus presented to warrant the position of the commonwealth as to its right to tax the so-called 'dividends' said to be annually credited on the premiums due from policy holders ; but the law looks below the mere appearance of things, and has regard to the reality, and, thus looking, it sees that the appellant misuses the terms 'dividend' and 'credit,' and, as shown above, pays no dividend and allows

no credit, but that, in reality, all that it does is to collect on the first premium a sum sufficient to meet the contingencies of any given year of the future, and then abstains from collecting any further overpayment while the first remains on hand."

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Mutual Benefit Life Insurance Co. v. Commonwealth, 128 Ky. 174, 107 S. W. 802.

"The dividend declared in any year is applied in reduction of the next maturing premium on the policy of the insured. It follows that, where a dividend has been apportioned and applied to the reduction of the premium named in the contract, the policy holder pays to the company, and the latter receives in cash only the difference between the maximum premium and the amount of the dividend, and these dividends, as the facts disclose, represent a surplus arising out of premiums previously paid, upon which the defendant company has already paid the state its two per cent. tax. The word 'premium,' as used in this statute, is subject to the limitations expressed in the words which follow and in a measure control its use, to wit: 'Received in this state in cash or other obligations.' The statute apparently does not require the company to pay the 2 per cent, tax on the full amount of premium named in its policies in this state. If so, the law would have so stated. On the contrary, the language "is 'two per cent, on all premiums received in cash and other obligations in this state.' "

Minnesota v. Mutual Benefit Life Insurance Co., District Court, Second Judicial District, Minnesota, Dec. 15, 1909, not reported, but quoted in 198 Fed. 208.

Under the British Act, held that sums or bonuses payable to participating policy-holders in a life insurance company constituted "profits or gains" of the company assessable to the income tax.

Last V. London Assurance Corporation, 10 App. Cas. 438, 65 L. J. Q. B. N. S. 92, 53 L. T. N. S. 634, 34 Week. Rep. 233, 2 Tax Cas. 100 (1885).

Under the Corporation Tax Law of 1909, which provides for the deduction of the net addition, if any, required by law to be made within the year to reserve funds, held that a deduction might be made of the additions to the reserve fund to secure

payment upon supplementary policy contracts. These consisted of policies under which the insured had exercised their option to have the proceeds paid in annual instalments for life or a given term of years, instead of a lump sum.
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Mutual Benefit Life Insurance Co. v. Herold, 198 Eed. 199^
212.

"These obligations seem to come fairly within the definition of reserve, as above given. Notwithstanding the policy holder has died, there still remain unpaid under the policy certain instalments not presently due, but which will mature from time to time in the future. These are as much policy obligations as they would have been if payable in one sum immediately upon the death of the insured. They have a value, and that value must be estimated, and, when estimated, adequate provision made for their payment as they mature, which can only be done by the establishment of a suitable reserve. Furthermore, such reserves are 'required by law' within the meaning of the act. As appears by the agreed statement of facts, the commissioners of insurance of all the states require the establishment of a reserve to cover the obligations of the company on such supplementary policy contracts."

Ibid. 198 Fed. 199, 213.

Under the Corporation Tax Law of 1909, held that, for the purpose of taxation the corporation's statement should be made on a cash or revenue basis; that uncollected and deferred premiums and interest accrued and due, but not actually received, should not be included.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199,
214.

An insurance company having one body of shareholders, carried on three branches of business, viz., marine, fire, and life insurance : Held, by the Queen's Bench Division, that the three branches must be treated as one business, and the profits calculated on the results of that business taken as a whole, and that additions made to the life fund, out of the annual receipts, were not subject to income tax as profits.

Last V. London Assurance Corporation (1884), L. R. 12 Q. B. Div. 389, 52 L. T. N. S. 604, 2 Tax Cas. 100. There was no appeal from the decision on these points. There was an appeal, however, to the House of Lords on another question. The Lords held that the sums or bonuses payable to "participat-

ing policy holders" in a life insurance company, constituted, "profits or gains" of the company assessable to income tax. The-

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profits should be calculated on the principle that whatever profit was made should be assessed, though the company may have bound themselves to pay it, or part of it, to the policyholders whose policies were still in force at the quinquennial period.

Last v. London Assurance Corporation (1885), L. E. 10
App. Cas. 438, 55 L. J. Q. B. K S. 92, 53 L. T. N. S. 634,
34 Week. Eep. 233, 2 Tax Cas. 100.

A company carried on the business of fire and life insurance :
— Held, that the net profits and gains from the two branches of business were to be massed together as one undivided income, assessable according to the rules applicable to the 1st case under Sched. (D.). Fire — Seeing that fire insurance policies are contracts for one year only, the premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the same period and ordinary expenses, may be fairly taken as the profits and gains of the company, without taking into account or making any allowance for the balance of annual risks unexpired at the end of the financial year of the company. Life — There is a radical difference between fire and life insurance. The profits and gains of a company on its business can only be ascertained by actuarial calculation, proceeding upon the result of the statutory quinquennial investigation, or of the usual periodical investigation in companies established before the statute, or of the triennial investigation prescribed by Sched. (D.) of the Income Tax Acts.

Scottish Union and National Assurance Co. v. Smiles (1889),
16 E. 461, 26 Scotch L. E. 330, 2 Tax Cas. 551.

A mutual life insurance association in which there were no shareholders, the funds of which belonged to the members, the participating policy-holders having a surplus beyond the expenditure for the year, which was appropriated for the benefit of the members, was held not to be liable to be assessed to income tax in respect of their transactions relating to participating policies as constituting a trade or vocation from which profits or gains arose or accrued within the meaning of the Income Tax Acts.

New York Life Insurance Co. v. Styles (1889), L. E. 14

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App. Cas. 381, 59 L. J. Q. B. K S. 291, 61 L. T. N. S. 201,
2 Tax Cas. 460.

In estimating the profits and gains of an insurance company, interest on investments, which has not suffered deduction of income tax at its source, must be taken into account.

Scottish Union and National Assurance Co. v. Smiles (1889),
16 E. 461, 26 Scotch L. E. 330, 2 Tax Cas. 551.

A life insurance company, receiving untaxed interest on a portion of its investments, was held liable to assessment in respect thereof, although the amount of the interest on its other investments, on which tax had been deducted, exceeded the profits earned by the company Per Lord Eshee, M. E. L. R. 22 Q. B. Div. p. 450: "Interest of money ought not first to be taxed as a separate subject-matter of taxation, and then brought again into account in arriving at the profits and gains of a business and so taxed again."

Clerical, Medical and General Life Assurance Society v. Carter (1889), L. E. 22 Q. B. Div. 444, 58 L. J. Q, B. N. S. 224, 37 Week. Eep. 346, 2 Tax Cas. 437.

A life insurance company derived the bulk of its gross incomes from taxed sources. The amount of this taxed income exceeded the company's net profits. The company received in addition, certain interest from which tax was not deducted: - Held, that this interest was properly assessable under Cases III. and IV. of Sched. (D.) in § 100. Per the Lord President, 5 Tax Cas. p. 226: "I thought it had been settled beyond all possibility of doubt, that inasmuch as the Income Tax Acts do not only deal with profit in the true sense of the word as a commercial profit, but also deal with and impose taxes upon the interest of investments, the Crown has always been allowed, when investments are held by a trading company, if it suits them, to say, 'We will charge you a tax upon the produce of your investments, and we won't charge the tax upon your profits.' The Crown cannot charge the tax on both - that is to say, it cannot take a trading account which has money - its assets and investments - and first of all charge income tax upon the produce of investments, and then over and above charge on the profits. It must elect between the two."

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Eevell V. Edinburgli Life Insurance Co, (1906), 5 Tax Cas. 221.

A fire and life insurance company having its head office in the United Kingdom, carried on business in the United King-

dom and in certain foreign countries and British colonies. By the laws of certain of the latter countries, the company was required, as a condition of transacting fire insurance business therein, to deposit certain minimum amounts with representatives of the governments there, which were required to be invested in accordance with the local laws. So long as the company carried on business in those countries, or any liability remained in respect of any risks, it was unable to recover any of the said sums, but the deposits were held as a fund out of which the claims of policy-holders in those countries could be paid. The company also made certain voluntary investments in those countries of sums which consisted of accumulated profits of the business made in past years, which investments were made, not under any legal obligation, but for the purpose of deriving income or profit. All the above classes of investments produced interest which was received by the company's agents or branches abroad, and such interest was not in fact remitted to the United Kingdom: — Held, by the Court of Appeal, that the interest or dividends from the investments in question, formed part of the profits or gains of the trade, adventure, or concern carried on, and were assessable under the 1st Case of Sched. (D.), and that the Crown had an option to tax under Case I. or Case IV— The facts in the second and third cases were similar.

Liverpool and London and Globe Insurance Co. v. Bennett;
Brice v. Northern Assurance Co. ; Brice v. Ocean Accident and
Guarantee Corporation, Limited, [1912] 2 K. B. 41, 81 L. J.
K. B. N. S. 639, 106 L. T. N. S. 323, 27 Times L. E. 279.

organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year:

Now or hereafter organized under the laws of any foreign country and

engaged in business in any State or Territory of the United States^ or in.

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Alaska, or in the District of Columbia. • * » Such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States. — Corporation Tax Law of August 5, 1909.

Where the American Bell Telephone Company, a Massachusetts corporation, leased telephones in Boston to be delivered there for use in New York, the rental to be a certain percentage of the royalties or rentals received by the licensees by subletting these telephones, with provisions in the leases that in case of default, the lessor might collect these rents and royalties in the name of the lessees, held, that the lessor, the American Bell Telephone Company, was not "doing business in" the state of New York, and was consequently not liable to

the New York state tax on its dividends.

People V. American Bell Telephone Co. 117 IST. Y. 241, 22 K E. 1057 (1889).

Same point, Commonwealth v. American Bell Telephone Co. 129 Pa. 217, 18 Atl. 122 (1889).

See, also, U. S. v. American Bell Telephone Co. 29 Fed. 17 (1886), per Mr. Justice Jackson.

A New York statute (L. 1880 Ch. 542, § 2, as amended by L. 1881, Ch. 361), provided that every foreign and domestic corporation "doing business in the state," with certain exceptions, "shall be subject to, and pay a tax, as a tax upon its corporate franchise or business, into the treasury of the state annually, to be computed as follows: If the dividends made or declared annually by such corporation" exceeded six per cent, "at the rate of one quarter mill upon the capital stock, for each one per centum of dividends so made or declared." If the dividends were less, the tax was at a less rate. It was held that the tax on a foreign corporation must be estimated upon the value of its whole capital stock, and that it was entitled to no deduction because part of its profits were made and part of its property situated without the state.

People V. Equitable Trust Co. 96 N. Y. 387 (1884).

People V. Horn Silver Mining Co. 105 N. Y. 76, 11 N. E. 155 (1887).

A foreign corporation carrying on business abroad, and earning profits there, had an agency carrying on business in Eng-

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land and earning profits there. Held that the agency was taxable in respect of all profits earned by it, and also upon so much of the dividends declared by the foreign corporation, and paid in England, as was derived from profits arising in England.

Gilbertson v. Fergusson, L. K. 7 Q. B. Div. 562 (1881), affirming, s. c. L. E. 5 Exch. Div. 57 (1879).

A corporation domiciled in England is taxable with respect to all profits earned by it, whether transmitted to England or not.

Cessna Sulphur Co. v. Jficholson, and

Calcutta Jute Mills Co. v. Same, L. E. 1 Exch. Div. 428 (1876).

A corporation domiciled in England is liable to the tax on

all profits earned by it, although a part of such profits are earned abroad and never transmitted to England.

Imperial, etc., Assn. v. Nicholson, 37 L. T. (N. S. 717 (1877)), Exch. Div. Kelly, C. B.

A company may be a "person residing in the United Kingdom" within the meaning of section 2, Schedule D, of the Income Tax Act, 1853, notwithstanding that it is incorporated and registered abroad.

Goerz v. Bell, 73 L. J. K. B. 448 ; [1904] 2 K. B. 136 ; 90 L. T. 675; 53 H. E. 64; 20 T. L. E. 348— Chanwell, J.

A company was incorporated and registered abroad for the purpose of prospecting and developing mining properties abroad and of floating companies for working them and of making a market for shares in those companies. The general meetings of the company were held abroad. The head office was in London. The directors had power to appoint agencies for managing the affairs of the company abroad. The meetings of the directors, some of whom resided abroad, and some in the United Kingdom, were held in London. The accounts were made up and audited, the dividends were declared, and the books of the company were kept in London. The greater part of its capital was invested abroad. The greater part of its business was done in London: Held, that the company was "a person residing in the United Kingdom" within the meaning of section 2, Schedule D. of the Act

Ibid.

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A foreign company, the Great Northern Telegraph Company of Copenhagen, had three marine cables in connection with Aberdeen and Newcastle, which communicated with the post office telegraph lines in the United Kingdom. The company had workrooms in London, Newcastle and Aberdeen. Messages from the United Kingdom were forwarded over the post office lines and the company's cables to Denmark, and from thence to Russia, China, Japan and India, by the company's wires and those of foreign governments. The post office collected the total charges paid for the transmission of the messages, and, after deducting their dues, handed the balance to the company, who retained the amount due to them for the transmission of messages over their cables and lines, and paid the residue to the various governments, etc., respectively entitled to it. The company made no profits from the transmission of messages over the land lines in the United Kingdom: Held, by the Court of Appeal, that the company carried on a trade in the United Kingdom, and were chargeable on the profits thereof accordingly.

Ericksen v. Last, 8 Q. B. D. 414; 51 L. J. Q. B. 86; 45

L. T. 703; 30 W. E. 301; 1 Tax Cas. 351, 357; 4 Tax Cas. 422 (1881).

A company incorporated and registered in Christiania (Norway), where its registered office was, its share list and books were kept, and where the shareholders' meetings were held, owned a ship. The two managers were resident in Norway, one of whom acted as director of the management. The charterir^ and all voyage receipts and disbursements were dealt with by Messrs. Wingate & Co., a firm resident in Glasgow, who received and retained all funds until required for payment of expenses or dividends. The form of the assessment was as follows: "Messrs. Wingate & Company for barque 'Chanaral' " : Held, that the company was not resident in the United Kingdom, but that it exercised a trade within the United Kingdom, for the profits of which the Glasgow firm, as its agents, were assessable to income tax, and that the form of the assessment was not invalid, although not expressly made upon Messrs. Wingate & Co. as agents for their principals.

Wingate v. Webber, 34 Sc. L. R. 699; 3 Tax Cas. 569 (1897).

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A foreign company had agents in England, ■who submitted all orders to their principals, the latter reserving the right to reject those not satisfactory. On receipt of the principals' authority, the agents accepted the offers. All goods for delivery in the United Kingdom were shipped free on board at Boston, U. S. A., and consigned to Liverpool in the name of the agents, who distributed them to the customers. Payment of the greater part of the amounts arising from the sales was made by customers' cheques to the agents, which were either forwarded to the principals at Boston, or paid into the agents' banking account in the United Kingdom, the amounts being subsequently remitted by the agents' drafts. In certain cases, when larger credit was required, customers forwarded their acceptances direct to the principals: Held, that the contracts, and the delivery of the goods, were made in the United Kingdom, and that the company exercised a trade in the United Kingdom. Per Wills, J., (p. 34) : "Even if the contract has been made in New York, an executory contract for sale, when he does deliver the goods in this country he exercises a trade and carries on a business."

Thomas Turner (Leicester) Limited v. Eickman, 4 Tax Gas. 25 (1898).

Under § 59 of the ITew Zealand Land and Income Assessment Act, 1900, income derived from business taxable, includes "the profits derived from or received in New Zealand." The respondent company had its head office in London, and carried on the biisiness of telegraphy in New Zealand, Australia and elsewhere, and sent messages from New Zealand to Madras. The

Government owned the telegraphs in New Zealand and received the entire charges for messages, deducting the cost of transmission over its own lines, and of transmission to New South Wales, the balance being paid to the Government of New South Wales. The messages then travelled by stages to the place whence they were dispatched by the respondent company's cable. The company received the balance after deduction of the various charges. No contracts were made between the New Zealand Government and the company respecting the company's operations: Held, that the company's profits for the transmission of messages over its own cables were not taxable, not being "derived from or received in New Zealand."

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Commissioner of Taxes for New Zealand v. Eastern Extension Telegraph Co. A. C. 526 ; 75 L. J. P. C. 84; 95 L. T. 308 ; 22 T. L. E. 730 (1906).

A company's profits consisted of a commission deducted from moneys received in London, under agency contracts of sales effected in London, of goods brought from New Zealand, as a result of transactions made by the company in New Zealand - Held, that the profits were actually made in London, and that the earlier transactions in New Zealand were insufficient to render those profits taxable under the New Zealand Land and Income Assessment Act, 1900, as profits derived from business carried on in New Zealand.

Lovell and Christmas v. Commissioner of Taxes, A. C. 46; 77 L. J. P. C. 31; 97 L. T. 651; 24 T. L. R. 32.

A French company, with its head office at Paris, and owning phosphate mines in Algeria, employed the appellants, who carried on business as merchants in Glasgow, as its sole principal agents for the sale of phosphates in the United Kingdom. The contracts for sale were entered into by the agents in the United Kingdom, who had authority to sell at or over minimum prices fixed by the company, and without reference to the company. No stock was kept in the United Kingdom. The company had sub-agents in various parts of the United Kingdom, who were appointed by the agents, subject to the company's approval. The agents were paid by commission. Delivery of the phosphates was made out of the United Kingdom. The contracts provided for payment of the price of the goods "by cash in London." In practice, however, the payment was made by means of crossed cheques, the cheques being made payable in some cases to the company and in other cases to the agents. The agents did not cash any cheques but invariably forwarded them to the company in Paris as received (indorsed where necessary), and did not pay them into a bank in the United Kingdom: - ' Held (1) (diss. Lord Dundas), that the company did not exercise a trade within the United Kingdom; and (2) that the appellants were not agents "having the receipt of any profits" within the meaning of § 41. Per Lord Aedwall (p. 224) : "I

am of opinion that the words 'having the receipt of any profits or gains' apply to the actual receipt of money, and do not apply

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to a case such as there is here, where the agreement of parties was that the appellants had no power to make the price of goods payable to themselves, and where in point of fact very few cheques were made payable to them; and that the fact that contrary to the regular course of business, customers occasionally made cheques payable to the appellants, really does not alter the question, as the appellants invariably sent to the company in Paris the cheques as received, and did not in any case cash them themselves and put the money into their own bank account, which, indeed, would be a breach of the contract of agency between them and the company. I think it is clear that the contemplation of the statute was that receivers, factors, or agents, should only be liable to pay income tax for their principals, where they have in their own hands the means of recouping themselves by having the receipt in money of profits and gains belonging to their principals." Per Lord Dundas (p. 229) : "But it does not follow, and is not in my opinion the case, that the agents in merely transmitting the cheques, etc., to Paris, were persons 'having the receipt of any profits or gains belonging to' the company. Per Lord Salvesen (p. 235). "The words 'in receipt of profits,' must, I apprehend, be construed as meaning lawfully in receipt of profits, and I apprehend that an agent is not lawfully in receipt of money due to his principal under a contract of sale made in the principal's name, because the purchaser chooses, or is induced by the agent, to make the cheques payable to him. The intention of the statute is not to make the agent personally liable for the income tax due by the foreign firm, but only to make him so liable where he has the opportunity of recouping himself out of moneys belonging to the foreign firm." Crookston Brothers v. Furtado, S. C. 217; 43 Sc. L. E. 134; 5 Tax. Cas. 602 (1911).

Where an English company owned all but three of the shares and all the personal property of an American brewing company and furnished the capital for carrying on the brewery in America, which the directors of the English company controlled, although they delegated their powers to managers in America; it was held that the former company was taxable in England upon all its profits. Althorpe v. Peter Sehoenhofen Brewing Co. 80 L. T. N. S. 395, 4 Tax. Cas. 41. See Frank Jones Brewing Co. v. Althorpe, 4 Tax. Cas. 6. But see Eex (The King) v. General Commissioners of Taxes, (Court of App. 1901) 2 K. B. 879, 890, per Vaughan Williams, L. J., 4 Tax. Cas. 549.

Certain mutual life assurance societies invested sums of money in Australia at interest. The interest accruing was not specially remitted to the United Kingdom, but was reinvested abroad. There was no share capital, and no dividend payable, and no profits were divisible among the policy-holders in the year of assessment. The interest was included in the revenue accounts : Held, that the interest was not received in the United Kingdom, and accordingly

-was not assessable under the 4th case.

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Forbes v. Scottish Widows' Fund and Life Assurance Society; Forbes v. Scottish Provident Institution (1895), 23 K. 322, 33 Scot. L. K. 228, 3 Tax Gas. 443.

"They do not invest in those investments for the sake of investment, or for the sake of making profit by those investments, but for the sake of having a fund invested in America to answer the requirements of the American law. In effect, it seems to me that the £5,502 is received in this country, because owing to the exigencies of the American law this money would have to be sent out from here if it were not otherwise provided; and if it can be otherwise provided, and so relieve the funds of the company in this country from being despatched from this, country, it is a mere matter of convenience, which does not appear to me in any way to alter the nature or character of the moneys for the purpose of investment."

Norwich Union Fire Insurance Co. v. Magee (1896) 73 L. T. N. S. 733, 44 Week. Rep. 384, 3 Tax. Gas. 457. Per Weight, J. (73 L. T. K S. p. 735). See however now, Gresham Life, etc. Society v. Bishop, *infra*.

An English life assurance society transacted business through its branches in India. It held securities in India, and retained there the interest arising therefrom as a matter of commercial convenience to meet Indian claims and expenditure, and but for such retention, an equal sum would have been required to be remitted to India. The interest was treated as a part of the divisible profits upon which dividends were paid in England, although the interest was never actually received in the United Kingdom: - Held, that the interest was constructively received in the United Kingdom and assessable under the 4th case.

Universal Life Assurance Society v. Bishop (1899), 68 L. J. Q. B.]Sr. S. 962 ; 81 L. T. IST. S. 422 ; 4 Tax Gas. 139. See however now, Gresham Life, etc. Society v. Bishop, *infra*.

Part of the revenue of a proprietary insurance company consisted of interest arising from foreign investments. This interest, although included in the company's accounts, and taken into consideration in estimating the profits divisible among the shareholders, was not required to meet the company's liabilities in the United Kingdom, which were met out of funds at their disposal there, and accordingly did not require to be, and in

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fact was not, remitted home, but was reinvested abroad : Held (diss. Lord Young), that this interest was not chargeable under the 4th case as having been received in the United Kingdom.

Standard Life Assurance Co. v. Allan (1901), 3 F. 805, 38 Scot. L. E. 628, 4 Tax Cas. 446.

An English life assurance society had funds invested in foreign countries upon securities there, and invested the interest, dividends, and rents therefrom in those countries, or remitted them directly to other foreign countries for investment. The society also carried on business in foreign countries, and applied the sums arising from foreign securities either in investment in those countries, in establishment or other expenses there, in remitting directly to other foreign countries for investment, or for the general purposes of the society abroad. The society included the amounts above mentioned as money received, in their accounts, and took them into account in arriving at the amount of the funds set out in their balance-sheets upon which surpluses or profits were ascertained. The shareholders were also paid an annual dividend of 5 per cent, out of the profits: - Held, by the House of Lords, reversing the decision of the Court of Appeal, that taking the interest into account was not equivalent to a receipt in the United Kingdom, and that income tax was not chargeable upon that part of the interest which was not remitted to the United Kingdom. Per Lord MacITaghten, [1902] A. C. p. 293: "The difficulty seems to have arisen from a misunderstanding or a misapplication of the judgment in the New Mexico Case (14 E. 98). That was a very special case. Whether the decision was right or wrong, it can have no bearing upon the question now before your lordships. Speaking for myself, I think the decision was right. In that case it seems to me, in the transmission to this country of money which the company was free to distribute, and the transmission to America, by way of exchange, of an equivalent amount which the company was bound to reinvest, the company acted as their own bankers, and did for themselves, by an entry in their books, what might have been done less conveniently and less economically by an ordinary bank or financial agent on their behalf." Per Lord Shand (p. 294) ; **In the case of the Scottish Mortgage Company of New Mexico

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14 E.. 98, the species facti were different, for there the company treated the money as received in this country, and merely saved themselves the expense of cross-remittances. It appeared there that the company was not entitled to divide the money earned abroad, unless it was received as profits in this country. It was treated as so received merely to avoid the expense and inconvenience of cross-remittances - money sent home, and the

same amount sent back by cross-cheques or drafts. That was a material point in the decision of the case, showing that the money had been really received in this country." Per Lord Brampton (p. 295) : "For the Crown the case of the Scottish Mortgage Company of New Mexico v. Commissioners of Inland Revenue, 14 K. 98, was much relied upon. I am not satisfied with the correctness of the judgment in that case, but, assuming it to be sound, it is distinguishable from the present case, for in paragraph 13 of the printed case before the Court of Session, there was an admission that the amount charged with the income tax had been applied in payment of interest and dividends to debenture and share holders in Glasgow." Per Lord Lindley (p. 298) : "Authorities have been referred to, and especially the Scottish cases of the New Mexico Co. (14 E. 98), Forbes (23 E. 322), and the Standard Life Assurance Co. (3 F. 805). The first case was very peculiar. Money received by the company's agents abroad was clearly and unmistakably treated by the company as remitted to and received by it here, and money here was treated by the company as remitted abroad in exchange for it. The exchange was effected by a book entry, but that entry was the business mode of carrying out cross-remittances which it would have been unbusinesslike and really childish to have effected in any other way. But thinking, as I do, that that case may be properly upheld, I am not prepared to adopt it as a new starting-point for further inferences. The language of the statute is the true starting-point in each case.

Forbes' Case (23 E. 322), and the Standard Life Assurance Co.'s Case (3 F. 805) were both based on this principle, and were, in my opinion, both clearly rightly decided. The Court of Appeal, in my opinion, considered this case distinguishable from the New Mexico Case (14 E. 98), but I am unable to. so regard it. Assuming them to be indistinguishable, it would.

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in my opinion, be more correct to overrule the New Mexico Case (14 R. 98), than to decide the present appeal in favor of the Crown."

Gresham Life Assurance Society v. Bishop, [1902] A. C. 28Y, Y1 L. J. K. B. K S. 618, 86 L. T. K S. 693, 50 Week. Eep. 593, 4 Tax Gas. 464.

Where money has been sent abroad for investment and the sums are sent home out of a bank account in which there are no separate statements of capital and income, and the whole amount left abroad after the remittances have been sent home is larger than the sums originally sent abroad, those remittances

must be considered as representing interests or profits, and be held liable for income tax, for the year in which they were sent home.

Scottish Provident Institution v. Allan, 72 L. J. P. O. ¶. S. 70 [1903] A. C. 129 ; 88 L. T. IST. S. 478, 67 J. P. 341, 4 Tax Gas. 591, 19 Times L. E. 432 H. L. (Sc.)

A mutual insurance society in Scotland, assessed under the 4th case, upon sums remitted from Australia in 1898, disputed liability on the ground that such sums were not in payment of interest, but in repayment of capital. Between 1885 and 1890, the society had remitted various sums to Australia for investment. The interest thereon was received by their representatives there, and paid into a bank account there ; and, prior to 1893, it was not brought to this country but invested in Australia. In and after 1893, certain sums were remitted to Scotland from Australia, and in 1898 the sum upon which income tax was now claimed was so remitted. After all these remittances had been made, there still remained in Australia a sum greater than the total of all the sums originally sent out for investment: — Held (1), that where the remittances had been made by the society's representatives from their account in Australia, in which repayments of capital had been intermixed with interest, and where the particular remittances had not been definitely identified with any particular repayments of capital, they must, at least, so long as a sum equal to the amount of capital originally remitted for investment to Australia remained still invested there, be presumed to be remittances of interest, and that the society were liable to be assessed upon such sums; but that (2)

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they were not liable to be so assessed upon a sum which had been remitted in part repayment of a loan direct to the society in London by the borrower's solicitor in Australia.

Scottish Provident Institution v. Allan, [1903] A. C. 129, 72 L. J. P. C. ISr. S. 70, 88L. T. N. S. 478, 5 F. 10, 40 Scot. L. E. 605, 4 Tax Cas. 591.

Interest from foreign securities, derived by an insurance society from its American investments, was not remitted to the United Kingdom, but was reinvested in America in bonds payable to bearer, and on mortgages of real property. These bonds and mortgages, with coupons attached thereto, were sent to the United Kingdom and kept at the society's head office: — Held, that the interest had not been "received in Great Britain," and accordingly was not chargeable with income tax.

Scottish Widows' Fund Life Assurance Society v. Farmer; Farmer v. Scottish Widows' Fund Life Assurance Society [1909], S. C. 1372, 46 Scot. L. R. 993, 5 Tax Cas. 502.

An insurance company, out of funds accumulated in America,

representing interest arising from foreign and colonial securities there prior to July, 1907, purchased in July, 1907, bearer bonds in New York, which were sent to the United Kingdom, and received at the head office of the company in the same month. These bonds were kept there for safe custody until August and October, 1908, when they were sold, and their proceeds received at the head office in Edinburg. The company having been assessed for the year ending April 5th, 1908, it was held that the interest was chargeable to income tax, as although it had been earned prior to the year of assessment, it had been "received in Great Britain in the current year," within the meaning of the rule in the 4th case.

Scottish Provident Institution v. Farmer [1912] S. C. 452; 49 Scot. L. E. 435, 6 Tax Cas. 34.

Constructive Eemittance. — A company was formed principally for borrowing money in this country, and investing it abroad on the security of land. The interest received abroad was brought into account in the company's books, by retaining out of the funds raised here a sum equivalent to that interest after defraying the working expenses in America, and out of this sum were paid all the working ex-

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peiiises in Great Eritain, the interest to debenture-holders and depositors, and a dividend to the shareholders for the year of assessment. The money itself, therefore, did not require to be sent home : — Held, that the company was rightly charged under the 4th case of Sched. (C), but that it might also have been charged under the 1st case. Per the Lord President, 2 Tax Cas., p. 174: "The interest received by the company's agents in America has not been in forma specifica sent to this country. The money received by the agents in America remains in their hands, and it remains in their hands for investment there. But then an equivalent for the amount of that interest is retained by the managers in this country, out of money borrowed by them on debentures for the purpose of being sent out to America and invested upon foreign securities there, so that the one sum is just set against the other in the books of the company here. They have received it in this most proper sense of the term, that it enters their books in this country as such interest, and is paid away as such."

Scottish Mortgage Co. of New Mexico v. McKelvie (1886), 14 Eeports 98, 24 Scot. L. E. 87, 2 Tax Cas. 165.

(See the comments on this case in Gresham Life Assurance

Society v. Bishop, [1902] A. C. 287, supra.)

Weight, J. [1893] 2 Q. B. Div. p. 516, said: "It remains to consider whether the dividends retained in America are within that limitation. It appears to me, that if the fourth case were applicable, those dividends ought in point of law to be regarded as received in England. For reasons of convenience the money is not sent over, but it forms part of the profit dealt with and divided by the company here ; and the effect of what is done is that a debt due and payable in England to the foreign shareholders is discharged by the money retained in America. That, I think, is equivalent to a receipt of the money here."

Bartholomay Brewing Co. v. Wyatt, [1893] 2 Q. B. 499, 62 L. J. Q. B. IST. S. 525, 69 L. T. IST. S. 561, 42 Week. Eep. 173, 3 Tax Cas. 213. (See however now, Gresham Life, etc. Society v. Bishop, supra).

Provided, however, that nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, Nor to such savings banks, savings institutions or societies as shall, Foster Income Tax. - 45.

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first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus. - Act of August 28, 1894, § 32.

"Provided, however, That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual." - Corporation-Tax Law of August 5, 1909.

"Co-operative dairies, no matter how organized, do not appear to fall within any of these exempted classes, and will, therefore, be required to make returns."

Euling T. D. 1996, June 15, 1914. This nullified Eegulation

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"1st. As to Mutual Savings Banks. - Under income tax laws prior to 1870, these institutions were specifically taxed. Under the new law, certain institutions of this class are exempt, provided the shareholders do not participate in the profits, and interest and dividends are only paid to the depositors. ~No limit is fixed to the property and income thus exempted - it may be \$100,000 or \$100,000,000. One of the counsel engaged in this case read to us during the argument from the report of the Comptroller of the Currency, sent by the President to Congress December 3, 1894, a statement to the effect that the total number of mutual savings banks exempted was 646, and the total number of stock savings banks was 378, and showed that they did the same character of business and took in the money of depositors for the purpose of making it bear interest, with profit upon it in the same way ; and yet the 646 are exempt and the 378 are taxed.

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He also showed that the total deposits in savings banks were \$1,748,000,000. * * *

"If this statement of the exemptions of corporations under the law of Congress, taken from the carefully prepared briefs of counsel and from reports to Congress, will not satisfy parties interested in this case that the act in question disregards, in almost every line and provision, the rule of uniformity required by the Constitution, then 'neither will they be persuaded, though one rose from the dead.' That there should be any question or any do^ibt on the subject surpasses my comprehension. Take the case of mutual savings banks and stock savings banks. They do the same character of business, and in the same way use the money of depositors, loaning it at interest for profit, yet 646 of them, under the law before us, are exempt from taxation on their income and 378 are taxed upon it. How the tax on the income of one kind of these banks can be said to be laid upon any principle of uniformity, when the other is exempt from all taxation, I repeat, surpasses my comprehension."

Pollock V. Farmers' Loan & Trust Co. 157 U. S. 429, .597-599, 39 L. ed. 759, 825, 826, 15 Sup. Ct. Eep. 673, per Field, J.

"Mutual telephone companies, mutual insurance companies, and like organizations, although local in character, and whose •income consists largely from assessments, dues, and fees paid by members, do not come within the class of corporations specifically enumerated as exempt. Their status under the law is

not dependent upon whether they are or are not organized for profit. !N"ot coming within the statutory exemption, all organizations of this character will be required to make returns of annual net income, and pay any income tax thereby shown to be due. For this purpose the surplus of receipts of the year over expenses will constitute the net income upon which the tax will be assessed."

Treasury Eegulation 80.

As to the validity of a statutory exemption of such companies, see Citizens' Telephone Co. v. Fuller, 229 U. S. 322^ 57 L. ed. 1206, 33 Sup. Ct. Kep. 833.

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or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations,

Including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations, or companies which make loans only to their shareholders. - Act of August 28, 1894, § 32.

"A society or association 'operating under the lodge system' is considered to be one organized under a charter, with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals, and supported by fees, dues, or assessments."

Treasury Regulation 89.

Clubs are not subject to the tax when they have been organized and operated exclusively for pleasure, recreation and other nonprofitable purpose, and they have no net income inuring to the benefit of any private stockholder, individual or member.

Acting Commissioner Williams to Crescent Athletic Club January 17th, 1914; Deputy Commissioner Speer to New York Athletic Club March 2nd, 1914; Commissioner Osborn to Lee, Higginson & Co. May 4th, 1914.

A golf club, the members of which were entitled on payment of their subscriptions to play on the links, admitted,

under the terms of its lease, visitors, who were nonmembers, to play on the links and to use the club-house, on payment of certain green fees fixed by the lessors. The annual expenditure incurred in the maintenance of the golf course alone exceeded the amounts of the green fees received from visitors. The commissioners for general purposes decided on appeal,

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that the club was chargeable under Sched. (D.) in respect of the green fees received from visitors, less such portion of the annual outlay in maintaining and keeping up the links and club-house, as the green fees bore to the entire annual income of the club or fund available for the maintenance and upkeep : — Held, that the club was carrying on an enterprise which was outside the scope of the ordinary functions of the club, and that any profits derived from the fees in question were chargeable under Sched. (D.) ; and, further, that the method adopted by the commissioners of ascertaining the amount of the profits, was erroneous, as being an arbitrary method having no necessary application to the facts, and therefore, in default of agreement, the case must be referred back to the commissioners to ascertain the amount of the true profits.

Carlisle and Silloth Golf Club v. Smith, [1912] 2 K. B. 177, 81 L. J. K. B. K S. 581, 106 L. T. IST. S. 573, 6 Tax. Cas. 48.

"3d. As to Building and Loan Associations. — The property of these institutions is exempted from taxation to the extent of millions. They are in no sense benevolent or charitable institutions, and are conducted solely for the pecuniary profit of their members. Their assets exceed the capital stock of the national banks of the country. One, in Dayton, Ohio, has a capital of \$10,000,000, and Pennsylvania has \$65,000,000 invested in these associations. The census report submitted to Congress by the President, May 1, 1894, shows that their property in the United States amounts to over \$628,000,000. Why should these institutions and their immense accumulations of property be singled out for the special favor of Congress and be freed from their just, equal, and proportionate share of taxation when others engaged under different names, in similar business, are subjected to taxation by this law ? The aggregate amount of the savings to these associations, by reason of their exemption, is over \$600,000 a year."

Pollock V. Farmers' Loan & Trust Co. 157 TJ. S. 429, 598, 39 L. ed. 759, 825, 15 Sup. Ct. Rep. 673, per Field, J.

"As to the objections that certain organizations, labor, agri-

cultural and horticultural, fraternal and benevolent societies, land and building associations, and those for religious, chari-

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table or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax."

Flint V. Stone Tracy Co. 220 U. S. 107, 173, 55 L. ed. 389, 422, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312, per Day, J.

"Domestic building and loan associations are among those enumerated as exempt from the requirements of the law. A domestic building and loan association is held to be one organized under and pursuant to the laws of the United States, or of a State or Territory thereof, or under the laws applicable to Alaska or the District of Columbia. Mutuality in operation and in the distribution of profits and benefits is essential to exemption. Therefore, in order to come within the exempted class such associations must not only be 'Domestic,' as defined, but they must be organized and operated exclusively for the mutual benefit of the members; that is, all the profits and benefits provided for in the articles of association and by-laws must be ratably distributed among all members regardless of the kind of stock held, according to the amount of money they have on deposit. An association issuing different classes of stock upon which different rates of interest or dividends are guaranteed or paid, does not come within the exempted class."

Treasury Regulation 87.

Under the Corporation Tax Law of 1909 held that building and loan associations were exempt as organized and operated exclusively for the mutual benefit of their trust, although they issue both prepaid and instalment shares of stock, the prepaid stock being granted a fixed dividend payable only out of the earnings of the association.

Herold v. Park View Bldg. & Loan Ass'n, - O. C. A. - , 210 Fed. 577, affirming Park View Bldg. & Loan Ass'n v. Herold, 203 Fed. 876.

Under the Corporation Tax Law of 1909 held that a building and loan association was not exempt when the articles of incorporation authorized "lending the shareholders of such association and others, the funds so accumulated," and the by-laws authorized the issue of preferred stock or stock the interest upon which was guaranteed, and authorized the directors upon finding

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that the income of the association could not be loaned profitably "to cancel any outstanding certificates of general stock not borrowed upon," paying the holder the book value of the stock so cancelled.

Pacific Bldg. & Loan Ass'n v, Hartsen, 201 Fed. 1011, 1016.

But see Central Bldg. L. & Sav. Ass'n v. Bowland, 216 Fed. 626.

nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual,
Nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes. — Act of August 28, 1894, § 32.

In Great Britain the application of profits to charitable or other purposes, or the motive with which a trade is carried on, does not affect the liability.

See Atty. Gen. v. Black (1871), L. E. 6 Exch. 308, 40 L. J. Exch. ISr. S. 194, 25 L. T. IST. S. 207, 19 Week. Rep. 1114, 1 Tax. Cas. 52; Mersey Docks v. Lucas (1883), 8 App. Cas. 891, 53 L. J. Q. B. N. S. 4, 49 L. T. N. S. 781, 32 Week. Eep. 34, 2 Tax. Cas. 25 ; Paddington Burial Board v. Commissioners of Inland Revenue (1884), L. R. 13 Q. B. Div. 9, 53 L. J. Q. B. N, S. 224, 50 L. T. IST. S. 211, 32 Week. Rep. 551, 2 Tax. Cas. 46; Blake v. Imperial Brazilian Rail. Co. (1884), 1 Times L. R. 68, 2 Tax. Cas. 58 ; Nizam's State Rail. Co. v. Wyatt (1890), L. R. 24 Q. B. Div. 548, 59 L. J. Q. B. N. S. 430, 62 L. T. IST. S. 765, 2 Tax. Cas. 584'; Harris v. Corporation of Irvine (1900), 2 F. 1080, 37 Scot. L. R. 799, 4 Tax. Cas. 221.

"The provisions of the law clearly indicate that companies which operate cemeteries for profit are liable to the tax. The status of cemetery associations under the law will, therefore, depend upon the character and purpose of the organization and what disposition is made of the income."

Treasury Regulation 90.

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"But when once an individual or a company has in that proper sense ascertained what are the profits of his business or

his trade, the destination of those profits, or the charge which has been made on those profits by previous agreement or otherwise, is perfectly immaterial : " per Lord Halsbuey, L. G.

Gresham Life Assurance Society v. Styles [1892] A. C. 309,
62 L. J. Q. B. K S. 41, 67 L. T. K S. 479, 41 Week. Eep.
270, 3 Tax. Gas. 185.

A hospital founded by voluntary contributions for the treatment of insane persons, accepted as patients (a) persons who paid remunerative prices, and (b) poor persons who did not pay the full cost of their maintenance and treatment, which was paid for out of the profit derived from the former class of patients, and applied its surplus income to the extension and improvement of the hospital buildings: - Held, that the surplus was profit assessable to income tax (Sched. D.), and that § 105, post, did not apply.

St. Andrew's Hospital (ISTorthampton) v. Shearsmith [1887],
L. E. 19 Q. B. Div. 624, 57 L. T. N. S. 413, 35 Week. Rep. 811.
2 Tax. Gas. 219.

Assuming for the purpose of argument, (1) that the institution was a "corporation for charitable purposes only," and (2) that profit made by carrying on the hospital was "yearly interest or other annual payment," it was held that such profits were not, by reason of the application of them to making the hospital more fit for the purposes for which the hospital was conducted, "payments applied to charitable purposes only," so as to exempt the institution from payment of income tax under Schedule (D.).

Ibid.

In delivering judgment in favor of the Crown, Lord Coleridge, C. J., referred to the assumption (2) that the profits to be taxed was "yearly interest or other annual payment," and said : "I do not think it is," an expression of opinion noted by Chables, J., in delivering judgment in Psalms and Hymns v. Whitwell, infra, as "in accordance with the decision which we pronounce in this case."

Ibid.

(This case was followed in Needham v. Bowers (1888), L.

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E. 21 Q. B. Div. 436, 59 L. T. K S. 404, 37 Week. Kep. 125,
2 Tax Cas. 360, supra.)

A hospital, wholly self-supporting, held, not exempt as a charitable corporation, though founded upon voluntary contributions, and though the services of the managers were gratuitous and the surplus over expenses had been devoted to charity

or to improvement of its own resources.

Ibid.

The income of a burial board which was created under a statute, held, taxable although it was applied in reduction of the poor-rates of the parish. It was a joint enterprise of the parish which was not charitable in its nature, and was not merely a means to accomplish parish ends, because a profit was distinctly contemplated.

Paddington Burial Board v. Commissioners of Inland Revenue, L. E. 13 Q. B. Div. 9 (1884).

"Charitable purposes" applies to the relief of poverty, and a religious trust is therefore not exempt as devoted to charitable purposes.

Baird Trustees v. Inland Revenue, 25 Scot. L. E. 533 (1888), Sc. Ct. Sess.

Free public libraries are not exempt as being "literary or scientific institutions."

Andrews v. Mayor, etc., of Bristol, 61 L. J. Q. B. E". S. 715 (1892).

A society of engineers, the income of which is in fact appropriated to the promotion of science, and not for the promotion of the professional interest or advantage of its members, although such interest or advantage is incidentally promoted, is exempt under a statute exempting income "legally appropriated and applied * * for the promotion of science."

Commissioners of Inland Revenue v. Forrest, L. E. 15 App. Gas. 334 (1890), H. L., affirming Matter of Institution of Civil Engineers, L. E. 20 Q. B. Div. 621 (1888), which reversed s. c, L. E. 19 Q. B. Div. 610 (1887).

The income of a trust of which a half was to be devoted to the support of Moravian missionary establishments, one-fourth to the support of children of Moravian ministers, and one-fifth to the support of single persons of the Moravian faith,, held, exempt as devoted to "charitable purposes."

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Queen ex rel. Pemsel v. Commissioners, L. E. 22 Q. B. Div. 296 (1888).

Lord ESHER, M. E., and Lopes, L. J., put their decision on the ground that the words "charitable purposes" were to be taken in their popular signification of aid to the poor, and that the trust in question was within that definition.

Fry, L. J., however, decided on the ground that by those words was intended the technical meaning which included all the uses mentioned in statute 43 Eliz. C. 4.

Commissioners v. Pemsel [1891] A. C. 531, adopting Fey's view, Lord Halsbuey, L. C, and Lord Beamwell, dissenting.

But see Commissioners v. Scott, (1892) L. R. 2 Q. B. Div. 152, affirming Matter of Bootham Ward Strays, 60 L. J. Q, B.]Sr. S. 612 (1891).

Certain trustees published a hymn book, and, in accordance with the trust deed, distributed the profits among widows and orphans of Baptist ministers and missionaries : - Held, that the profits were chargeable under Sched. (C), and were not an "annual payment" within § 105, so as to be exempt when applied to charitable purposes.

Trustees of Psalms and Hymns v. Whitwell (1890), 7 Times L. E. 164, 3 Tax Cas. 7.

A society, founded for the diifusion of religious literature, sold Bibles, etc., at a depository or shop in Edinburgh, and sent out colporteurs, whose duties were to sell Bibles, etc., and to act as cottage missionaries. The sales at the Edinburgh shop resulted in a profit, but the colportage was carried on at a loss. The net result of the whole operations was an annual loss, which was met by subscriptions: - Held, that the colportage was not a trade, and that the loss on it could not be set against the profits from the bookseller's business carried on at the shop. Per the Lord President, 33 Scot. L. E. p. 291 : "The legitimacy of the importation into the account of the colportage must depend entirely on whether it, as well as the shop, is a business, trade, or adventure, carried on for commercial purposes, and on commercial principles."

Religious Tract and Book Society of Scotland v. Forbes (1896), 33 Scot. L. E. 289, 3 Tax Cas. 415.

A philanthropic association having classes, a gymnasium, etc., also conducted, on ordinary business lines, a restaurant,

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■which was open to the general public. On its first branch, the association did not cover expenses, but made a profit on the restaurant:- - Held, that the losses on the other branches could not be deducted from the profits on the restaurant.

Grove v. Young Men's Christian Association (1903), 67
J. P. 279, 88 L. T. K S. 696, 19 Times L. E. 491, 4 Tax
Cas. 613.

The New York Historical Society, which maintains a library
and collection of paintings, manuscripts and antiquities, and
which gives illustrated lectures upon American history, is not an
educational corporation.

Matter of De Peyster, 210 IST. Y. 216, 104 IST. E. 714.

The Metropolitan Art Museum, vfhich maintains a museum
and library of art and gives popular instruction, is organized
.for educational purposes.

Matter of Mergentine, 129 App. Div. 367, 113 E". Y. Supp.
348, affirmed on opinion below in 195 E". Y. 572, 88 IST. E. 1125.

So is the Arnot Art Gallery, which has similar- functions.

Matter of Arnot, 71 Misc. 390, 130 JST. Y. Supp. 197, af-
firmed in 145 App. Div. 708, 130 N. Y. Supp. 499, affirmed in
203 N. Y. 627, 97 K E. 1102.

The Women's Christian Temperance Union, organized to
promote "throughout the State of JSTew York" the cause of total
abstinence from all intoxicating liquors as a beverage and the
suppression of liquor traffic, which, amongst other means for
carrying out the objects of its incorporation, carries on educa-
tional work in the public schools of the State, is an educational
corporation.

Matter of Field, 71 Misc. 396, 130 K Y. Supp. 195, affirmed
in 147 App. Div. 927, 131 IST. Y. Supp. 1114.

Under the Corporation Tax Law of 1909 it was held, that the
qualifying clause "no part of .the net income of which inures to
the benefit of any private stockholder or individual" did not
qualify the whole proviso that only the immediately preceding
clauses, namely, "nor to any corporation or association organized
and operated exclusively for religious, charitable, or educational
purposes."

Herold v. Park View Bldg. & Loan Ass'n, - C. C. A. - ,
•210 Fed. 577; affirming Park View Bldg. & Loan Ass'n v.
Herold, 203 Fed. 876. Contra, Pacific Bldg. & Loan Ass'n v.
Sartsen, 201 Fed. 1011.

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nor to any civic league or organization not organized for profit, but
operated exclusively for the promotion of social welfare:

Provided further, That there shall not be taxed under this section
any income derived from any public utility or from the exercise-

of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: ,

That nothing herein contained shall apply to states, counties, or municipalities. — Act of August 28, 1898, § 32.

The revenue of a municipal corporation is not taxable.

U. S. V. Eailroad Co. 17 Wall. 322, 21 L. ed. 597 (1872), .
U. S. Supreme, Hunt, J.

Interest on a loan payable by a railroad to tbe city of Baltimore was not taxable.

Attorney General Hoar, 13 Ops. Atty. Gen. 67 (1869).

A tax levied on the average amount of deposits is collectible, although part of the deposits are state funds. The tax is on the bank and not on the state.

ISTeitherrailroads owned by a state, or the gross income thereof, or the profits accumulated therefrom, or dividends paid upon its bonds are subject to taxation under the Act of June 30, 1864.

Attorney General Stanbery, 12 Ops. Atty. Gen. 277 (1867).

Articles manufactured by convict labor in the penitentiaries of a state for the use of a state or on account of a state are not taxable.

Ibid.

So ruled, as regards the Detroit House of Correction, where all female prisoners other than those convicted of murder and all other convicts at the discretion of the proper officers might

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be confined instead of in the state prison, and where Federal prisoners were confined.

Attorney General Browning, 12 Ops. Atty. Gen. 376 (1868).

Dividends accruing to the state of Massachusetts on stock

Owned by it in the Boston and Albany railroad were not taxable.

Attorney General Ackerman, 13 Ops. Atty. Gen. 439 (1871).

Acting Attorney General Browning, 12 Ops. Atty. Gen. 402, (1868), ace.

"It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

"The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself, and those activities which are of a private character. The former, the United States may not interfere with by taxing the agencies of the state in carrying out its purposes ; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate Federal taxation."

Flint V. Stone Tracy Co. 220 U. S. 107, 172, 55 L. ed. 389, 421, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912B, 1312, per Day, J.

Held that a State engaged in the sale of alcoholic liquor was subject to the internal revenue tax imposed by the United States.

South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Eep. 110, 4 Ann. Cas. 737.

718 annotated statute and digest.

Held that intrastate railroad companies, although engaged solely in the public service of a State, are subject to a Federal excise tax.

Flint V. Stone Tracy Co. 220 IT. S. 107, 55 L. ed. 389, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912B, 1312.

A gi«wt-public corporation, organized for the management of docks, was required to expend its income, after certain expenses of management, in reduction of the principal of its debt, by means of a sinking-fund. When the debt was paid, the taxes were to be reduced so as merely to cover expenses. Other payments were forbidden. Held, under an act taxing income before it should be paid to creditors or stockholders, that the surplus of income carried to the sinking-fund was taxable. A

profit is a profit, irrespective of the mode of application.

Mersey Docks, etc.. Board v. Lucas, L. E. 8 App. Cas. 891 (1893), House of Lords.

Lowrey v. Harbour Commissioners, 3 Times L. R. 516 (1887), Q. B. D., ace.

A quasi-municipal corporation, organized to supply a city with water, was empowered to levy water-rates on the citizens to an amount sufficient to pay expenses and one per cent of all sums borrowed, and that percentage was to go into a sinking-fund. Held, that sums so paid into the sinking-fund were not taxable as profits. The corporation is a mere agent for the rate-payers, and they make no profit.

Glasgow, etc. Commrs, v. Inland Revenue, 2 Ct. Scss. (4th Ser.) Cas. 708 (1875), Scot. Ct. Sess.

Bed quere, it appearing that the corporation was empowered to sell water upon special terms outside of the city, whether the surplus arising upon such transaction would not be a profit ?

Ibid.

A municipal corporation receiving tolls upon all coal landed on its beach or brought within its limits, which by a statute were to be applied on public works, held, taxable on the income so obtained.

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Attorney General v. Black, L.E. 6 Exch. 308 (1871), Exch. Chamb. affirming s. c. Ibid. p. 78 (1871), Ot. Ex.

Semhle, otherwise if the tolls had fallen merely on the inhabitants and not on strangers.

Ibid.

Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Terri-

tory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

This is designed to protect the interests of the City of New York under its contracts for the construction of subways.

See *Admiral Realty Co. v. City of New York*, 206 N. Y. 110, 99 N. E. 241.

(b) Such income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property;

Above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale. — Act of August 28, 1894, § 32.

"Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy

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and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, That in the case of a corpora-

tion, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia, not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness -to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies, or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds." - Corporation Tax Law of August 5, 1909.

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Wliea taxes are imposed by a state on stockholders, and the corporation is authorized to deduct them from dividends, held, that the corporation could not deduct taxes so retained as expenses of its business.

Central National Bank v. U. S. 137 U. S. 355, 34 L. ed. 703, 11 Sup. Ct. Eep. 126 (1890), Haelan, J., affirming U. S. V. Central ISTational Bank, 24 Fed. 577 (1885), U. S. C. C. S. D. ISr. Y., Wallace, J., which reversed s. c. 15 Fed. 222 (1883), U. S. D. C. S. D. K Y. Bkown, J. And see s. c. 10 Fed. 612 (1882), U. S. D. C. S. D. K Y., Beown, J.

A company, whose business consisted in buying and selling

land and rights of land, bought a piece of vacant ground for 8981. and after erecting houses upon it burdened each house with a fen duty: the fen duties in all amounted to 1141. per annum. The company then sold the fen duties for 3,1351., but retained the land and houses. The Inland Revenue claimed Income Tax on the difference between 8981. and 3,1351. as profit earned by the company: Held, that the claim could not be sustained, inasmuch as the price of 3,1351. could not have been obtained if the ground had remained vacant, but was partly due to the erection of houses by the company.

Furtado v. Cardonald Feuing Co. [1907], S. C. 36, 44 Scot. L. R. 66, Ct. of Sess.

A golf club, the members of which were entitled on payment of their subscriptions to play on the links, admitted, imder the terms of its lease, visitors, who were non-members, to play on the links and to use the club-house, on payment of certain green fees fixed by the lessors. The annual expenditure incurred in the maintenance of the golf course alone exceeded the amounts of the green fees received from visitors. The commissioners for general purposes decided on appeal, that the club was chargeable under Sched. (D.) in respect of the green fees received from visitors, less such portion of the annual outlay in maintaining and keeping up the links and club-house, as the green fees bore to the entire annual income of the club or fund available for the maintenance and upkeep : — Held, that the club was carrying on an enterprise which was outside the scope of the ordinary functions of the club, and that any profits derived from the fees in question were chargeable tinder Sched. (D.) ; and, further, that the method adopted by Foster Income Tax. — 46.

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the commissioners of ascertaining the amount of the profits, was erroneous, as being an arbitrary method having no necessary application to the facts, and therefore, in default of agreement, the case must be referred back to the commissioners to ascertain the amount of the true profits.

Carlisle and Silloth Golf Club v. Smith, [1912] 2 K. B. 177, 81 L. J. K B.]Sr. S. 581, 106 L. T. IST. S. 573, 6 Tax. Cas. 48.

A mortgage company, whose business consisted in lending money on the security of land in Texas and elsewhere, raised money by issuing debentures, and lent it at higher rates of interest: — Held, that the cost of raising the debentures, such as commission paid to brokers, and other expenses, could not be deducted as trade expenses.

Texas Land and Mortgage Co. v. Holtham (1894) 63 L. J, Q. B. K S. 496, 10 Times L. K. 337, 3 Tax Cas. 255.

A company borrowed money to be employed in the business,

and undertook, on the repayment of any capital sum, to pay to the lenders, along therewith, a bonus of 10 per cent: - Held, that the bonus could not be claimed as a deduction.

Arizona Copper Co. v. Smiles (1891), 29 Scot. L. E.. 134, 3 Tax Cas. 149.

The business of selling annuities is to be taxed upon the same principle as any other commercial concern, such as the selling of coals or corn, where the cost of the thing sold to the trader is one of the expenses incident to carrying on the trade. Disbursements made wholly and exclusively for the purposes of a trade in annuities must be deducted in estimating the assessable "profits," as a grocer has to deduct the price paid by him for the tea or sugar which he retails. The decision of the House of Lords may be regarded as having settled the following points that - Held, that (1) There is no distinction between the words "profits" and "gains." (2) "The amount of the profits" means the same as "the balance of the profits." (3) "Payable out of profits" means "payable out of profits brought into charge."

Per Lord Watson [1892] A. C. p. 320 : "In order to bring annuities or other annual payments within the scope of the rule, they must, in my opinion, either be directly charged upon profits, or be in themselves of such a character that they form a proper charge upon profits. . . . An annuity to the widow

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of a deceased partner, interest on capital advanced by a partner, or upon money borrowed for the purposes of the business, are truly payable out of profits earned, and therefore ought not to be deducted in estimating the income yielded by the business."

Per Lord Heeschbill (p. 324) : "When read in connection with § 102, the rule clearly relates only to annuities payable out of profits and gains 'brought into charge' by virtue of the Act. . . . I think the 4th rule was primarily designed to meet such a case as that in which a trader had contracted to make an annual payment out of his profits, as, for example, when he had agreed to make such a payment to a former partner, or to a person who had made a loan on the terms of receiving such payment. But for the rule it might plausibly have been contended that in such a case a trader was only to return as his profits what remained after making such payment."

Gresham Life Assurance Society v. Styles [1892] A. C. 309, 62 L. J. Q. B. K S. 41, 67 L. J. N. S. 479, 41 Week. Eep. 270.

Under the Corporation Income Tax Law of 1909, held, that a life insurance company might deduct expenditures for ordinary renewals of office furniture, and uniforms of atten-

dants, rugs, awnings, small hardware, door mats, window shades, lamps, meters, electrical equipment, and other articles of a similar character, exceeding in one year \$4,000, which were no greater than the previous yearly average of similar expenses and did not exceed five per cent, of the similar articles owned by the plaintiff.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 216.

Held that in ascertaining the profits of the business of fire insurance, a deduction claimed in respect of "unearned premiums," could not be made.

Imperial Fire Insurance Co. v. Wilson (1876), 35 L. T. N. S. 271, 1 Tax Cas. 71.

Held, that, as fire insurance policies were contracts for one year only, premiums received for the year of assessment, or on an average of three years, deducting losses by fire during the said period and ordinary expenses, might be fairly taken as profits and gains of the company, without taking into account,

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or making any allowance for, the balance of annual risks unexpired at the end of the financial year of the company.

Scottish Union and National Assurance Co. v. Smiles (1889), 16 K. 461, 26 Scotch. L. R. 330, 2 Tax Gas. 551.

The accounts of the company, on which the assessment was based, showed that the unexpired risks were not taken into account for the purpose of ascertaining the amount of profits divisible among the company's shareholders, and the sums in respect of such risks were carried to general reserve after declaring the dividends out of the profits. It was held, by the House of Lords, that as it was not shown that the method of assessing, without deduction in respect of unexpired risks, was unfair, having regard to the facts of the particular case, the deduction claimed was inadmissible.

In General Accident Assurance Corporation v. M'Gowan [1908] A. C. 207, 11 L. J. P. C. 1ST. S. 38, 98 L. T. K S. 734, 5 Tax Cas. 308, an insurance company carried on the business of fire insurance, and issued policies for periods of twelve months and longer periods, the premiums being payable in advance. The risk on the policies ran from the dates therein mentioned. At the end of the financial year, a considerable number of policies were still running, under which the company were under liability to pay in the event of any loss. The company, since 1888, had carried forward annually in their accounts 40 per cent, of the yearly premium receipts as a reserve, in order to bring about the correct incidence, as between year and year, of the premium income which had to answer to accidental in-

vidence of fire losses, and on the balance of which, over or under the losses and charges for the year, the profit or loss attaching to the business depended. The provision thus made of 40 per cent, amounted on December 31st, 1901, to £466,138, and rose, during the three years on which the assessment was based, to £522,472. The increase in the reserve then amounted to £56,334, and consequently affected the return for the year of assessment by one-third, or £18,778. A deduction was claimed in respect of this sum. The General Commissioners of Income Tax, on the appeal by the company, were of opinion that the latter were entitled to carry a percentage of fire premiums received in one year, forward to reserve in respect of unearned premiums, which did not form part of the profits for the year,

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and they found, in the case of the company, that 40 per cent, was a reasonable and proper allowance, and reduced the assessment accordingly: — Held, by the House of Lords, that having regard to the finding of fact by the commissioners, the sum in question was properly deductible by the company, and that there was no rule of law by which to frame an estimate of the balance of profits and gains after allowing for the unexpired risks when the accounts were made up. It was a question of facts and figures in each case, whether the assessment was fair both to the Crown and to the subject (*General Accident Assurance Corporation v. M'Gowan*, discussed and explained). Per Lord Loebuen, L. C. [1912] A. C. p. 454: "I am equally anxious that your lordships should not be supposed to have laid down that the method applied by the commissioners in the present case has any universal application.. If the Crown wishes in any future instance to dispute it, the Crown can do so by evidence, and it is not to be presumed that it is either right or wrong. A rule of thumb may be very desirable, but cannot be substituted for the only rule of law that I know of, namely, that the true gains are to be ascertained as nearly as it can be done."

Sun Insurance Office v. Clark, [1912] A. C. 443, 81 L. J. K B. N. S. 488, 106 L. T. K S. 438.

Held that where not authorized by the articles of association, the payment of the income tax on director's fees out of the company's funds, was an illegal payment.

Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148, 75 L. J. Ch. K S. 261, 94 L. T. N. S. 398, 54 Week. Rep. 359.

Traveling expenses of directors from their residences to the

office of their company, were held to be inadmissible deductions.

Evell V. Directors of Elworthy Brothers & Co. (1890),
3 Tax Cas. 12.

A company undertook to construct a railway in Brazil under a Government guarantee of 7 per cent. It raised capital by debentures at 5[^] per cent, and devoted the 7 per cent, to payment of debenture interest, and to the formation of a sinking fund to pay off the debentures: — Held, that the whole of the sum. paid under the guarantee during construction, was liable

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as interest, without deduction in respect of the amount applied to the sinking fund.

Blake v. Imperial Brazilian Eail Co. (1884), 1 Times L.
R. 68, 2 Tax Cas. 58. See also incidentally, City of London Contract Corporation v. Styles (1887), 4 Times L. E. 51, 2 Tax Cas. 239.

A company constructed a railway in Hyderabad. The Nizam's Government guaranteed an annuity for twenty years of 5 per cent on the issued share and debenture capital, to be applied in paying interest on such capital, and in forming a sinking fund for the redemption of the debentures, subject to provisions for repayment of the sums paid, with interest, out of profits earned. — Held, that the whole annuity was chargeable with duty, without deduction, for the amount applied to the sinking fund.

Nizam's State Rail Co. v. Wyatt (1890), L. R. 24 Q. B.
Div. 548, 59 L. J. Q. B. K S. 430, 62 L. T. N. S. 765, 2 Tax Cas. 584.

second, all losses actually sustained within the year and not compensated by insurance or otherwise,

In the case of an individual, fourth, losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless; fifth, debts due the taxpayer actually ascertained to be worthless and charged off within the year. B. supra. See citations thereunder. Losses— Act of August 28, 1894, § 32.

A new association formed by the incorporation of a partnership, was held to succeed to the concern within the meaning of this 4th rule, and that the extraordinary depression in the iron and coal trades, whereby the company was unable to sell either so large a quantity of coals, or to obtain so good a price as formerly, was a "specific cause;" and further, that the 6th case of Sched. (D.), applied, and under it the computation should be made on the amount of the full value of the profits

and gains received annually, i. e., for the current year.

Ryhope Coal Co. v. Toyer (1881), L. R. 7 Q. B. Div. 485,
45 L. T.]Sr. S. 404, 30 Week. Rep. 87, 1 Tax. Cas. 343.

A railway company discontinued certain steamships which,
in the course of the business, had been running at a loss. In.

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estimating their profits for income tax on the basis of the income of the previous year (r. 3 of No. III. of Sched. (A.)), the company claimed to deduct the loss on the steamboats during that year: — Held, that they were entitled to do so; the assessment must be based on the net profits of the whole undertaking for the year preceding the year of assessment, the loss on the steamships being taken into account, as running steamships was a part of the undertaking of the company.

Highland Eail. Co. v. Special Commissioners (1885), 13 R. 199, 23 Scot. L. E. 116, 2 Tax Cas. 151.

The business, together with a distillery, of a firm of blenders, wine merchants, and exporters, was acquired and worked by a limited company. The firm had not commenced to work the distillery. At the appeal, the General Commissioners were of opinion, that the concern of the company was not a succession to that of the firm, within the 4th rule. The court decided that as the commissioners had held that there was not a sufficient or general identity between the two businesses, that question was one of fact and not of law, and there was nothing to show that the commissioners had arrived at a wrong legal result.

Alexander Ferguson & Co. v. Aikin (1898), 4 Tax Cas. 36.

A "tramp" steamer was sold, but no books, accounts, or list of customers were sold with it: — Held, that the new owners were not entitled to be assessed as successors in the business of the previous owners. The sale was not the sale of a business, but of "a corporeal moveable, which happened to be a ship."

Watson Brothers v. Lothian (1902), 4 F. 795, 39 Scot. L. R. 604, 4 Tax Cas. 441.

See also Farrell v. Sunderland Steamship Co. (1903), 88 L. T.]Sr. S. Y41, 4 Tax Cas. 605, set out under r. 3, ante.

The defendant company purchased the business and premises, etc., of a local bank, at Wolverhampton. They then for the

first time, opened a branch at Wolverhampton on the premises so purchased, and there carried on business with the manager and staff previously employed by the local bank. The profits and expenses of the Wolverhampton business were merged in those of the defendant company as a whole, and there were no means of ascertaining what proportion, if any, of increase or decrease of the profits of the company had arisen from the

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business purchased. Held, by the Court of Appeal, that there had been a succession within this rule.

Bell V. National Provincial Bank of England [1904] 1 K. B. 149, 73 L. J. K. B. N. S. 142, 90 L. T. N. S. 2, 52 Week. Eep. 406, 5 Tax Cas. 1.

A tramway company was incorporated under a local Act. At a later date, the undertaking of the company was transferred to a new company, which also acquired at the same date the business of an omnibus company, and carried on the two businesses simultaneously for a considerable period. Subsequently, the local authority purchased the tramway undertaking under a statutory power of compulsory purchase, and proceeded to extend its area, and to substitute electric trams for the existing horse-drawn vehicles : Held, that the local authority were successors of the company in respect of their tramway business, and had not set up or commenced a new business by their reconstruction, and were therefore entitled to be assessed on the average of the profits of the three preceding years. Per Bray, J., 95 L. T. N. S. p. 839 : "Railway companies are always spending capital and extending their railways, and some of them have substituted electrical power for steam, but it could not be suggested that by doing this they were commencing or setting up a new business. It so happens here that the extension and modification was very great, and that it occurred just at the time when the respondents had bought the original undertaking, but I do not think' this alters the case. There seems no reason why the revenue should be benefited by the accident of transfer at the time."

Stockham v. Wallasey Urban District Council (1906) 95 L. T. N. S. 834, 71 J. P. 244.

including a reasonable allowance for depreciation by use, wear and tear of property, if any;

In computing the net income of individuals there is deducted" a reasonable allowance for exhaustion, wear and tear of property arising out of its use or employment in the business." B. supra.

A reasonable allowance for depreciation of property, if any. — Corporation Tax Law of August 5, 1909.

Under such a provision, a mining corporation engaged in extracting ore from its mines is entitled to an allowance for depre-

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ciation equal to the value in place of the ore extracted and disposed of during the year. U. S. v. Nipissing Mine Co. 202 Fed. 803.

Upon the general subject of depreciation see Tr. Eeg. 127-146 ; Ct. Mim. T. D. 1077, 2005, quoted supra, § 64.

Under the Act of June 30, 1864, as amended by the Act of July 13, 1866, the tax was upon profits, not earnings, "carried to the account of any fund or used for construction." So held, where against sums carried to the account of some fund or used for construction, the corporation claimed to offset items 1, for loss and depreciation of book accounts; 2, depreciation in the value of bonds; 3, depreciation in the value of "the street connection track;" 4, losses on a purchase of capital stock, which offsets were allowed. Estimated depreciation of assets may be included in losses.

Little Miami, etc., E. E. v. U. S. 108 U. S. 277, 27 L. ed. 724, 2 Sup. Ct. Eep. 627 (1883), Waite, C. J., reversing U. S. V. Little Miami, etc., E. E. 1 Fed. 700 (1880), U. S. Cir. Ct. S. Dist. Oh., Swing, J.

It does not clearly appear in the report in 108 U. S. 277 that the depreciation was merely estimated, but that fact is clearly stated in 1 Fed. 700, at p. 702, and would seem to be the ratio decidendi. See also the report of the case at circuit in 26 Int. Eev. Eec. 101.

The tax accrues upon all sums "made or added * * * to surjilus or contingent funds, at the moment of addition, and is not diminished by a subsequent loss of the whole or a part of the fund," e. g., by embezzlement.

Solicitor General Phillips, 14 Ops. Atty. Gen. 643 (1874).

Sums carried to the account of a repair fund come within the clause as to profits carried to the account of any fund or used for construction and cannot be deducted.

Euling, 2 Int. Eev. Eec. 100.

A sum set apart for depreciation, aside from repairs, is an addition to capital out of profits and therefore taxable under the English Act.

Forder v. Handyside, L. E. 1 Exch. Div. 233 (1876). But see Dowell on Income Tax, 7th ed. 280.

Depreciation of the value of machinery due to removal of

business is not deductible. It is loss of capital.

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Smith V. Westinghouse Brake Co. 2 Tax Cas. 357 (as stated in Dowell on Income Tax, 7th ed. p. 117, n.).

A railway company were allowed as a deduction a sum expended in repairs or renewals of rolling stock, and which has been sufficient to keep their rolling stock in good working condition and repair. They claimed a further deduction for wear and tear of newly added stock, which had not required any repair or renewal: - Held, that the deduction for wear and tear to be made under the above section was a deduction for diminished value as a means of earning income, and not as a saleable subject, and that inasmuch as the stock in question was undiminished in value for the purpose of earning income, no further deduction could be allowed. Query, whether the words "as they may think just and reasonable" do not exclude review. Per Lord Gifford: "The company cannot get deduction for deterioration twice over, first by deducting the actual expense of repair and renewal, and then by deducting an additional estimate for the same thing."

Caledonian Eail. Co. v. Banks (1880), 8 E. 89, 18 Scot. L. R. 85, 1 Tax Cas. 487.

A steamship company were held not to be entitled to an allowance in respect of depreciation of their ship by (a) loss of earning power owing to the ship having become more or less obsolete, or (b) diminution in market value apart from that caused by wear and tear.

Burnley Steamship Co. v. Aikin (1894), 21 E. 965, 31 Scot. L. R. 803, 3 Tax Cas. 275.

A company owned a fleet of passenger and cargo steamers. The commissioners allowed a deduction of 5 J per cent, from the written-down value of the whole fleet in the company's books, as representing the diminished value of the ships by reason of wear and tear during the year of assessment. The company claimed a reduction of the assessment, on the ground of overcharge, consequent upon insufficient allowance for depreciation: - Held, that the appeal must be refused.

Leith, Hull, and Hamburg Steam Packet Co. v. Bain (1897), 3 Tax Cas. 560.

The commissioners of income tax are not bound to take an average of the depreciation during the three preceding years,

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it may adopt as their estimate the amount of the depreciation during the year immediately preceding that of assessments.

Cunard Steamship Co. v. Coulson [1899] 1 Q. B. 865, 68 L. J. Q. B.]Sr. S. 554, 80 L. T. IST. S. 326, 4 Tax Gas. 63.

A company owned a fleet of passenger and cargo steamers. In fixing the deduction for diminished value through wear and tear, the commissioners took into account that the sum annually allowed might be so invested as to produce interest at 3 per cent, per annum: — Held, that the commissioners were not entitled to make any deduction from the sum representing the wear and tear on account of any interest that might be earned on the sum allowed.

Leith, Hull, and Hamburg Steam Packet Co. v. Musgrave (1899), 1 F. 1117, 36 Scot. L. E. 745, 4 Tax Cas. 80.

A company owning a fleet of ships, claimed to be allowed a deduction of 5 per cent, on the original cost of the ships, as representing the diminished value by reason of wear and tear during the year. The commissioners found that the average duration of the service of ships in the fleet was seventeen years, though the average duration of life was twenty-eight years; and that an allowance at the rate of 6 per cent, on the diminished value of the fleet for the year of assessment, arrived at by taking the original cost of each vessel and writing it down year by year at the rate of 6 per cent, on the diminishing value, was a sufficient allowance to cover the diminished value by reason of wear and tear during the year : — Held, by the Queen's Bench Division, that the commissioners had dealt with all that was property before them, and that the questions were substantially questions of fact. On Appeal to the Court of Appeal, and upon a further statement made by the commissioners that interest was not taken into consideration, etc., the appeal was dismissed upon the ground that no question of law arose.

Peninsular and Oriental Steam Navigation Co. v. Leslie (1900), 79 L. T. N. S. 118, 82 L. T. N. S. 137, 4 Tax Cas. 177. This case was followed in British India Steam Navigation Co. v. Leslie (1900), 17 Times L. K. 104, 4 Tax Cas. 257, in which the facts were similar.

A firm owned a fleet of ships of the average age of thirty-one years. Prior to the year of assessment there had been allowed

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yearly an amount by way of deduction for diminished value by

reason of wear and tear, such sums amounting in the aggregate to not less than 96 per cent, of the original cost. The breaking-up value in the year of assessment was considerably more than 4 per cent, of the original cost: — Held, that the commissioners were bound to consider to what extent there had been a diminution of value during the year of assessment, and to decide what was a just and reasonable allowance in respect thereof, and that they were not entitled to take into account the allowances made in previous years, and further that a hulk, which had formerly been a sailing ship, and was used as a floating warehouse for coal, was "plant" within this section. Per Walton, J., [1906] 1 K. B., p. 316 : "The case might be different if there were any evidence of an agreement between the appellants and the commissioners that the allowance for depreciation should be calculated upon the basis of its being an allowance which would at the end of a period of years, taking into account the breaking-up value of the vessels, fully replace the appellant's capital, and that after that date no further allowances should be made ; but there is no evidence to that effect, and no such agreement is relied upon."

John Hall, Junior & Co. v. Eickman, [1906] 1 K. B. 311, 75 L. J. K. B. K S. 178, 94 L. T. N. S. 224, 54 Week. Eep. 380.

The London County Council purchased certain tramways from different companies. These tramways were formerly worked by horse power, but the council proceeded to reconstruct them in order to work them by electric traction. For the purpose of assessing the profits of these tramways for income tax, the practice had been adopted of deducting the amounts actually expended on repairs and renewals in each year, in lieu of estimating the deduction to be made for depreciation under the provisions of § 12 of the Customs and Inland Revenue Act, 1878. By March 31st, 1904, thirty-eight miles of track had been reconstructed, of which five miles were worn out, and would have required reconstruction for horse traction. The remaining thirty-three miles were not worn out, but their life was much below the average life of a rail. A certain number of the horse traction cars, although not worn out, had been discarded, and others substituted. In the assessment to income tax of the

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profits for the year ending April 5th, 1904, the Commissioners of Income Tax followed the practice previously adopted, but refused to allow any deduction in respect of the thirty-three miles of line referred to, or in respect of the cars which were not worn out : — Held, that no question of law was raised in the case, and further, that the practice adopted was not applicable, and that the appellants had no cause of complaint as they had received all that they were entitled to under the practice.

London County Coimcil v. Edwards (1909), 100 L. T. K S. 444, 73 J. P. K S. 213, 25 Times L. E. 319, 5 Tax Cas.

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and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made;

As it first passed the House, "on the basis of their original •cost in cash or the equivalent of cash" took the place of the phrase beginning "not to exceed."

Under the Corporation Tax Law of 1909 it was held that a greater percentage, namely, 31.11, might be allowed for extracted ore.

U. S. V. Mppissing Mines Co. 202 Fed. 803. See T. E. Dec, Wos. 1742, 1755.

A coal owner, who also owned the estate of which the mine formed part, in ascertaining the amount of his profits, claimed a deduction in respect of capital lost through partial exhaustion of the mine: — Held, that the deduction was not allowable. Miller v. Pairie (1878), 16 Scot. L. E. 189,

A mine owner was held, by the House of Lords, not to be entitled, in ascertaining the amount of his profits for assessment, to deduct a sum as representing the amount of capital expended in making bores and sinking pits, which had been exhausted by the year's working (Knowles v. Me Adam (1877), L. E. 3 Exch. Div. 23, 47 L. J. Exch. N. S. 139, 37 L. T. N. S. 795, 26 Week. Eep. 114, held wrongly decided). Per Earl Caiens (1881), L. E. 6 App. Cas. p. 324: "I am not prepared to say that under the words of 5 & 6 Vict. chap. 35, a mine owner might not in some cases be entitled to an allowance in respect of the cost of sinking a pit, by means of which pit the minerals are gotten which are the source of profit for the year in which the pit was sunk. I desire to reserve my opinion on that point until the question arises. But in the present case the question is altogether different. It is, as now explained, can a mine owner write off and deduct from the gross earnings of his mine in a particular year, a sum to represent that year's depreciation of all the pits in the mines, whenever sunk? I am clearly of opinion that this cannot be done." Per Lord Pen-

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ZANCE (p. 326) : "The words 'profits received therefrom,' are here introduced to define the annual value of the thing which is to be taxed, which is the 'mine,' and it could not, I think, be intended that for the purpose of calculating the 'annual value' of a 'mine,' the original cost of the 'mine' itself, or any part of it, should be first deducted. On the contrary, the words 'profits received therefrom,' in this connection, mean, I think, the entire-profit derived from the 'mine,' deducting the cost of working it, but not deducting the cost of making it." Per Lord Blackbuen

(p. 335) : "It was said by Lord Cairns in *Gowan v. Christie* L. E. 2 H. L. Sc. App. Gas. p. 284, 8 Mor. Min. Eep. 688, that a lease of mines 'is not in reality a lease at all in the sense in which we speak of an agricultural lease. There is no fruit; that is to say, there is no sowing and reaping in the ordinary sense of the term, and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of the land.' I think this is a perfectly accurate statement. But the argument that no income tax should be imposed on what is, perhaps not quite accurately, called rent reserved on a mineral lease, because it is a payment by instalments of the price of minerals forming part of the land, any more than on the price paid down in one sum for the out and out purchase of the minerals forming part of the land, is, I think, untenable." (p. 339) : "I do not wish to lay down any general proposition, either that money expended in sinking pits can never be in the nature of expenses incurred within the five years in working the coal so as to be properly taken into account in estimating the profits made in that period ; or to say what, if any, the circumstances are under which it may be done. That, I think, had better be left to be determined when the case arises."

Coltress Iron Co. v. Black (1881), L. K. 6 App. Gas. 315, 51 L. J. Q. B. N. S. 626, 45 L. T. K S. 145, 29 Week. Eep. 717, 1 Tax Gas. 287.

See also incidentally, the following decision under Sched. (D.). An English company owning lands in Chili, on which they manufactured nitrates and iodine by working up certain deposits found on the land, claimed to be entitled, in estimating their yearly profits and gains, to make deductions in respect of the exhaustion of the deposits : - Held, by the House of Lords,

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that they were not entitled to do so, the land being "capital" within the Income Tax Act, 1842.

Alianza Co. v. Bell, [1906] A. C. 18, 75 L. J. K. B. K S. 44, 93 L. T. K S. 705, 54 Week. Eep. 413, 5 Tax Gas. 172.

In the case of cost-book mines under the Stannaries Acts, where a call had been made upon the shareholders for the purpose of sinking a new shaft, the commissioners for general purposes had allowed a deduction in respect thereof, being of opinion, that in a cost-book mine there was no such thing as capital, and that there could be no profit in working such a mine until every expenditure had been met : - Held, that the commissioners were wrong, and that the question whether the expenditure was capital or not was one of fact.

Morant v. Wheal Grenville Mining Co. (1894), 71 L. T. IST. S. 758, 3 Tax Cas. 298.

A company sank a shaft of a tin mine about fifty fathoms

further down, which extension, together with the old portion, was used as a ventilating shaft, and as a centre from which levels and roads could be cut for the purpose of discovering lodes or pockets of ore at a level below those portions of the mine which had been wholly or partially exhausted, and also for the purpose of raising and lowering men and materials, but not for the purpose of winning ore from a vertical lode. The sinking operations occupied about two years and cost £2,940. The commissioners allowed the deduction of the said sum, being of opinion that the expenditure was proper working cost, and could not properly be dealt with as capital : — Held, that there was no evidence to support the finding of fact by the commissioners, and further that the expenditure was capital expenditure and not working expenditure, and that the company were in effect opening up a new mine and accordingly the deduction was not permissible.

Bonner v. Bassett Mines, Limited, Law Times, Dec. 21st, 1912, p. 179.

Kecouping Dead Kent from Eoyalties. — A mine was subject to a minimum dead rent. When the royalties exceeded the dead rent, the surplus might be retained until the company was recouped the amount by which in fo-.:je*-yew#^he dead rent had exceeded the royalties —Held, that in estimating the profits of

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the mine, no deduction was allowable in respect of such surplus royalties so retained, although in previous years the dead rent had been paid and assessed when the mine had not commenced working.

Broughton and Plas Power Coal Co. v. Kirkpatrick (1884), L. K 14 Q. B. Div. 491, 54 L. J. Q. B. K S. 268, 33 Week. Eep. 278 ; 2 Tax Cas. 69.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:

In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds. G (c) infra.

The net profits or income of all corporations, companies, or associations shall include the amounts » » » carried to the account of any fund.— Act of August 28, 1894, § 31.

In the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds. — Act of August 5, 1909.

Under the Act of 1909, held, that a deduction might be made of the additions to the reserve fund to secure payment upon supplementary policy contracts.

Mutual Benefit Life Insurance Co. v. Herold, 198 Fed. 199, 212, explained supra.

Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual

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policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

All corporations, joint-stock companies or associations and insurance companies * * * shall render a true and accurate return * * * setting forth: (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid ■within the year on policy and annuity contracts:

Provided, further, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof; and in case of a corporation joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it dur-

ing the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves;

Provided, further. That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof- and life insurance companies shall not include as income in any year such portion of any actual premiums received from any individual policyholder, Foster Income Tax.^-47.

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or treated as an abatement of premium of such individual policyholder, within such year; - G. (c) infra.

In the case of insurance companies the sums other than dividends paid within the year on policy or annuity contracts. - Act of August 5, 1909.

See Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199, 212, and other cases cited supra, pp. 459-465.

third, the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: Provided further. That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued

by such bank, banking association, loan or trust company;
All corporations, joint-stock companies or associations and insurance companies » * * shall render a true and accurate return * * * getting forth . . . (sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under

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the authority of the United States and separately the amount so paid by it for taxes imposed by the Government or any foreign country. — G. (c) infra.

(Third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits. — Act of August 5, 1909.

Under the Act of August 5, 1909, all interest upon a mortgage not assumed by the company, but encumbering land that it has bought, may be deducted; but when the mortgage has been assumed, only so much of the interest thereupon as does not exceed the interest upon its capital stock. Attorney General Wickersham, 38 Op. Atty. Gen. 198.

Under the same statute, held that where the ordinary business of a corporation is the purchase, sale, lease and management of land, interest upon bonds secured by a mortgage thereupon is deductible as ordinary and necessary expenses in the maintenance and operation of its business, and as charges required to be paid as a "condition of the continued use or possession" of its property.

Anderson v. Forty-two Broadway Co. C. C. A. Second Ct. 313 Fed. 777 ; affirming Forty-two Broadway Co. v. Anderson, 309 Fed. 991 ; Certiorari granted by S. C. U. S. Oct. 36, 1914.

A deduction cannot be allowed for interest paid from which the company failed to deduct the tax at the time of payment as required by the statute. City of London Contract Co. v. Styles, 4 Times L. E. 51 (1887), Ct. App. affirming s. c. 3 Times L. E. 513 (1887).

fourth, all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country:

In computing net income for the purpose of the normal tax there shall be allowed as deductions: » » • third all National, State, county, . school and municipal taxes paid within the year, not including those assessed against local benefits. — B, supra.

All corporations, joint-stock companies or associations and insurance companies * » ♦ shall render a true and accurate return ♦ ♦ ♦ setting forth * • • (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the government of any foreign country. — G, (e) infra.

That all state, county, municipal, and town taxes paid by corporations, companies or associations, shall be included in the operating and business expenses of such corporations, companies, or associations. — Act of August 28, 1894, § 32.

Third. There shall be deducted from the gross amount of the net income of such corporation, joint-stock company or association, or insurance company • » * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein. — Act of August 5, 1909. Provided, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States,

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For authorities upon what is income from business transacted and capital within the United States, see supra, pp. 339-343, 470-481.

first, all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property;

second, all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made;

All losses actually sustained by it within the year in business conducted by it within the United States or its Territories, Alaska or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property if any. — Act of August 5, 1909.

For authorities on depreciation and mines see pp. 386-388, 499-507, supra.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further. That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year

As to domestic insurance companies, see supra in G (b).

In the case of insurance companies the sums other than dividends, paid

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within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to its reserve funds. — Act of August 5, 1909.

For authorities, see pp. 459-466, supra.

third, the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: Provided, That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed;

Or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest 80 paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; - Corporation Tax Act of August 5, 1909.

fourth, all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia.

[In case of a domestic corporation,] "all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country." - G (b) supra.

[The return must state in the case of a domestic or foreign corporation:] "(seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country."- G (o) infra.

In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

(c) the tax herein imposed shall be computed upon its entire net* income accrued within each preceding calendar year ending D^

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December thirty-first: Provided, however, That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion

of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year:

The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: Provided, however. That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for. - D supra.

Provided further. That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed.

Provided, That every corporation, joint-stock company or association, and insurance company computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment. - Subsection G (c) infra.

All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter.

It shall be the duty of any person, partnership, firm, association, or corporation * * * in case of income tax on. or before the first Monday of March in each year * * to make a list or return. - ^U. S. R. § .3173 as amended by this act, infra.

Shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five. - ^Act of August 28, 1894, § 35.

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On or before the first day of March, nineteen hundred and ten, and the

first day of March in each year thereafter. — Act of August 5, 1909.

and all corporations, joint stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, Provided further: That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year » * " : and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located, at any time not less than thirty days prior to the date upon which its annual return shall be filed. — supra.

shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter,

or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, Or in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States.

— Act of August 5, 1909.

in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe. See the Rules and Regulations, infra. In such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, — Act of August 5, 1909.

shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer,

A full return, verified by oath or affirmation, in such form as Commissioner of Internal Revenue may prescribe, of all the following matters for the whole calendar year last preceding the date of such return. — Act of August 28, 1894, § 35.

A true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer. — Act of Aug. 5, 1909.

to the collector of Internal Revenue for the district in which it has its principal place of business.

To the collector of its collection district. — Act of August 28, 1894, § 35. To the Collector of Internal Revenue for the district in which such cor-

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poration, joint stock company or association, or insurance company, has its principal place of business. — Act of August 5, 1909.

setting forth (first) the total amount of its paid up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year; (third) the gross amount of its income, received during such year from all sources. First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature. — Act of August 28, 1894, § 35.

Setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint-stock company or association, or insurance company at the close of the year ; (third)

the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received during such year from all sources. * ♦ • Also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock of other corporations, joint-stock companies or associations, or insurance companies, subject to the tax imposed by this section. — Act of August 5, 1909.

and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States, And if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia. — Act of August 5, 1909. See pp. 470-481, supra.

fourth, the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, Second. The expenses of such corporation, company, or association exclusive of interest, annuities, and dividends. — Act of August 28, 1894.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately. — Act of August 28, 1894.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed. — Act of August 28, 1894.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address of each of such persons and the amount paid to each. — Act of August 28, 1894.

(Fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the

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business and properties of such corporation, joint-stock company or association, or insurance company, within the year. — Act of August 5, 1909.

stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property,

Stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property. — Act of August 5, 1909. See pp. 470-481, supra.

and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States;

And if organized under the laws of ii, foreign country the amount so

paid in the maintenance and operation of its business within the United

States and its Territories, Alaska, and the District of Columbia. — Act of August 5, 1909. See pp. 470-481, supra.

fifth, the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise.

(Fifth) the total amount of all losses actually sustained within the year and not compensated by insurance or otherwise. — Act of August 5, 1909.

stating separately any amounts allowed for depreciation of property.

Stating separately any amounts allowed for depreciation of property. —

Act of August 5, 1909. See pp. 470-481, supra.

and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: provided further, that mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: provided further, that mutual marine insurance companies shall include in their return of

gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; and in case of a corporation, joint-stock company or association.

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or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: Provided further. That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;

Similar language is found in subsection g (b) supra, concerning the ascertainment of the net income of domestic and foreign insurance companies, with the additional clause in the case of assessment insurance companies, whether domestic or foreign, that the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

And in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses

actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any required by law to be made within the year to reserve fund. — Act of August 5, 1909.

-sixth, the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum

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of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from the business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States;

Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, * * ♦ (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expenses of doing business: Provided further, That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed: and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan, or trust company; ♦ » ♦

(Sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other in-

debtedness not exceeding the paid-up capital stock of such corporation, joint-stock company or association, or insurance company, outstanding at the close of the year, and in case of a bank, banking association or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its

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paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States. — Act of August 5, 1909.

seventh, the amount paid by it within the year for taxes imposed

under the authority of the United States and separately the amount

so paid by it for taxes imposed by the government of any foreign

country;

"Such net income shall be ascertained by deducting * * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the Government of any foreign country: Provided, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country,, such net income shall be ascertained by deducting ♦ * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia." — Subsection G (b).

Provided, That in stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States • * * (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. — Subsection G (b) supra.

(Seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein. — Act of August 5, 1909.

eighth, the net income of such corporation, joint-stock company

or association, or insurance company, after making the deductions-

in this subsection authorized.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends. — Act of August 28, 1894.

(Eighth) the net income of such corporation, joint-stock company or association, or insurance company after making the deductions in this section authorized. — Act of August 5, 1909.

All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue. — Act of August 5, 1900.

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All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year,

All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year. — Act of August 5, 1909.

and said assessment shall be paid on or before the thirtieth day of June:

That said tax shall be paid on or before the first day of July in each year.— -Act of August 28, 1894, § 32.

Said assessments shall be paid on or before the thirtieth day of June. — Act of August 5, 1909.

Provided, That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment. — Subdivision C. supra.

except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section
See Subsection E, supra.

That it shall be the duty of every corporation, company, or association

doing business for profit to keep full, regular and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief. He shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made;

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and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income, and then add fifty per centum hereto, which said assessment so made shall then be the lawful assessment of such income. — Act of August 28, 1894, § 36.

except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commission of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, — Act of August 5, 1909, sec 38, Par. Fifth.

Such a return may be made by the commissioner after the tax under the original return has been paid.

Eliot Nat. Bank v. Gill (D. Mass.) 210 Fed. 933, Bingham, Ct. J.

In determining the time, the first day should be excluded and the last included ; so that a discovery made on March 2, the third year after the return is due, justifies a new return by the commissioner.

Ibid.

The new return may be made when the original return was made in good faith, but was false through a mistake of law.

Ibid.

Semble that where the discovery was made within three years,, the assessment may be subsequently corrected.

Ibid.

or by existing law,

See U. S. Rev. Stat. §§ 3173, 3176 (U. S. Comp. Stat 1901, pp. 2065, 2068).

and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.

And all sums due and unpaid ■ that day shall draw interest thereafter at the rate of six per centum per annum. — Act of Aug. 5, 1861, § 51.

And to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and [or] insolvent persons. — Act of July 1, 1862, § 92. And to any sum or sums annually due and unpaid for thirty days after the thirtieth of June, as aforesaid, and for ten days after demand thereof by the collector there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and [or] insolvent persons. — Act of July 1, 1862, § 92. And to any sum or sums annually due and unpaid after the <.hirtlet[h] of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty. — Act of March 3, 1865, § 1.

And to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the account of duties unpaid, as a penalty, except from the estates of deceased or insolvent persons. — ^Act of July 13, 1866, § 1.

And to any sum or sums annually due and unpaid after the thirtieth day of April, as aforesaid, and for ten days after notice and demand thtrcof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid and interest at the rate of one

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per centum per month upon said tax from the time the same became due, as a penalty, except from the estates of deceased, insane or insolvent persons. — ^Act of March 2, 1867, § 13.

And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand thereof by the collector there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estate of deceased, insane, or insolvent persons. - Act of July 14, 1870, § 10.

And to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month upon said tax from the time the same becomes due, except from the estates of deceased, insane, or insolvent persons. - Act of August 28, 1894, § 30.

Semble, that upon presentation of the oath permitted by § 93 of the Act of July 1, 1862, the collector had no discretion but to strike off the increase from the assessment, and

Semble, that mandamus would lie to compel him so to strike it off.

Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943 (1863), U. S. Cir. Ct. S. Dist. N. Y. Hat.1, J.

In a suit in equity to recover the amount of a tax imposed by a statute with interest at the rate of twelve per cent, until paid, the defendant admitted part of the tax to be due and paid so much of the tax with twelve per cent interest into court. Held, the sum so paid in being greater than the interest then accrued on the whole tax, which the plaintiff alleged to be due, that it should be applied, in accordance with the defendant's intention, to the principal and interest which the defendant admitted to be due, and further, that on the remainder of the tax decreed to be due interest should be computed at the rate of twelve per cent, until the date of the decree, and after that at the rate of only six per cent.

Massachusetts v. Western Union Telegraph Co. 141 U. S. 40, 35 L. ed. 628, 11 Sup. Ct. Eep. 889 (1890), Geay, J.

By mutual mistake of collector and taxpayer, the basis of the tax was underestimated and the tax underpaid. In a suit to

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recover the balance due, held, that interest should not be allowed until demand.

Second, etc. Street K. K. v. City of Philadelphia, 51 Pa. 465 (1866).

Interest cannot be allowed upon taxes until they are fixed by

an assessment or charge by the taxing officer and notice thereof to the taxpayers.

Ibid.

Interest was not allowed to the Government, where the refusal to pay taxes was induced by inconsistent department rulings, and where another suit for the statutory penalty was pending.

U. S. V. Dollar Savings Bank, 15 Int. Ev. Rec. 193, Fed. Cas. No. 14,979 (1871), U. S. Cir. Ct. E. Dist. Pa. McKen-

NAN, J.

The demand, under the Act of June 30, 1864, must be a demand for payment, not merely a demand for a return as to property, and it must also be a demand for the specific amount to be paid.

U. S. V. Pacific Railroad, 4 Dill. 71, Fed. Cas. No. 15,984 (1877), U. S. Cir. Ct. E. Dist. Mo. Millee, J.

The state taxing officers having for a series of years collected taxes of the defendant at a certain rate, held that the state was estopped from collecting further taxes for the same period.

Commonwealth v. Pennsylvania Co. 145 Pa. 266, 23 Atl. 549 (1891).

Interest should be collected on taxes the payment of which was withheld during appeal ; but the penalty should be exacted only if the taxes are unpaid ten days after notice of rejection of claim.

Ruling, 10 Int. Rev. Rec. 57.

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order of the president, under rules and regulations to be prescribed by the Secretary of the Treasury and Approved by the President: Provided further, That the proper officers of any State imposing a general income tax may upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing Foster Income Tax. - 48.

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the name and income of each such corporation, joint-stock company, association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

The proviso was inserted in the Senate.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court. — Act of August 5, 1909, Sec. 38.

The rules for the collection of internal revenue provide : "All records in the offices of collectors of internal revenue or of any of their deputies are in their custody and control for purposes relating to the collection of the revenues of the United States only. They have no control of them and no discretion with regard to permitting the use of them for any other purpose. Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local of-

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ficers, or to produce such records or copies thereof in a State court, whether in answer to subpoenas duces tecum or otherwise. "Whenever such subpoenas shall have been served upon them, they will appear in court in answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this department. The information contained in the records relating to special tax payers in the collector's office is furnished by these persons under compulsion of law for the purpose of raising revenue for the United States ; and there is no provision of law authorizing the sending out of these records or of any copies thereof for use against the special tax payers in cases not arising under the laws of the United States. The giving out of such records or any copies thereof by a collector in such cases is held to be contrary to public policy and not to be permitted. As to any other records than those relating to special tax payers, collectors are also forbidden to furnish them or any copies thereof at the request of any person. Where copies thereof are desired for the use of parties to a suit, whether in a State court or in a court of the United States, collectors should refer the persons interested to the following paragraph in rule X of the rules and regulations of the Treasury Department, namely:

In all cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished to the court only and on a rule of the court upon the Secretary of the Treasury requesting the same. Whenever such rule of the court shall have been obtained collectors are directed to care-

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fully prepare a copy of the record or document containing the information called for and send it to this office, whereupon it will be transmitted to the Secretary of the Treasury with a request for its authentication, under the seal of the department, and transmission to the judge of the court calling for it, unless it should be found that circumstances or conditions exist which make it necessary to decline, in the interest of the public service, to furnish such a copy."

This rule was authorized by the general authority conferred upon the Secretary of the Treasury by the Revised Statutes.

U. S. Rev. Stat. Sec. 161 (U. S. Comp. Stat. 1901, p. 80).

Boske V. Comingore, 177 U. S. 459, 460, 461, 44 L. ed. 846, 847, 20 Sup. Ct. Rep. 701.

See Foster's Fed. Pr. 5th ed. § 339.

And a revenue officer, who has been punished by a State court for contempt in refusing to produce copies of reports made to him by distillers, or of other records, will be released upon a writ of habeas corpus by the Federal courts.

Boske V. Comingore, 177 U. S. 459, 44 L. ed. 846, 20 Sup. Ct. Rep. 701, s. c. Re Comingore, 96 Fed. 552 ; Re Lamberton, 124 Fed. 446. See Foster's Fed. Pr. 5th ed. § 339.

It was formerly held that income returns are not privileged communications, and the collector has no right to withhold them in evidence.

Ruling, 10 Int. Rev. Rec. 5.

Held, under the old Income Tax Act, that a clerk to the commissioners was bound to produce under subpoena the defendant's appointment as collector, and to give evidence as to the latter's acts notwithstanding the oath,

Lee V. Birrell (1813), 3 Campb. 336.

A plaintiff by bill unsuccessfully sought to compel a defendant to make a discovery of his returns for income tax. Qtwere whether a discovery of income tax returns could, under any circumstance, be compelled. The disclosure might render the defendant liable to penalties under the Income Tax Act.

Mitchell V. Koecker (1849), 18 L. J. Ch. K S. 294, 11 Beav. 380, 12 Beav. 44, 13 Jur. 797, per Lord Langdale, M. P.

The Solicitor of Inland Revenue declined to produce letters received from the defender, as being prejudicial to the public

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service, and such refusal was upheld by the Court of Session in Scotland.

Brown's Trustees v. Hay (1897), 35 Scot. L. E. 340, 3 Tax. Gas. 598.

Damages were awarded against the defender, who had been employed in winding up the affairs of a firm of solicitors, and who had furnished to the Inland Revenue contents of documents relating to the business profits of a former client of such solicitors.

Brown's Trustees v. Hay (1898), 35 Scot. L. E. 877.

In an action for damages for slander, it was held that the defender was not entitled to production of the pursuer's income tax returns.

Gray v. Wyllie (1904), 6 F. 448, 41 Scot. L. E. 342.

It has now been decided in Scotland that the production of the returns will not be ordered, but a diligence was allowed as to the receipts.

Shaw V. Kay, 12 Scot. L. T. E. 495, 5 Tax Cas. 74 (1904).

The court in Scotland formerly refused a motion for the production of income tax receipts.

Christie v. Craik, 2 F. 1287, 37 Scot. L. E. 503 (1900).

Macdonald v. Hedderwick, 3 F. 674, 38 Scot. L. E. 455 (1901).

As to the production by the surveyor of taxes, in the winding-up of a company, of balance sheets relating to income tax assessments.

In re Hargreaves, Limited [1900], 1 Ch. 347, 48 Week. Eep, 241, 4 Tax Cas. 173.

It was held that the defender was not entitled to production of the pursuer's income tax returns.

Gray v. Wyllie, 41 Scot. L. E. 342 (1904).

Held that the Crown has a right of discovery, but cannot be compelled to give discovery.

Attorney-General v. ISTewcastle-on-Tyne Corporation [1897],
2 Q. B. 384, 66 L. J. Q. B. N. S. 593, 77 L. T. N. S.
203.

As to the production and discovery of documents generally

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in revenue proceedings, etc., see Attorney-General v. Emerson (1882), L. E. 10 Q. B. Div. 191, 52 L. J. Q. B. K S. 67, 48 L. T.]Sr. S. 18; and Attorney-General v. Ne-wcastle-on-Tyne Corporation [1897], 2 Q. B. 384, 66 L. J. Q. B. K S. 593, 77 L. T.]ST. S. 203. In the latter case, it was laid down that the Crown has a right of discovery, but cannot be compelled to give discovery.

If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, And for any default in the making or rendering of such list or return, with tlie declaration annexed. - Act of June 30, 1864, § 120.

And if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or as- sociation, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, com- pany, or association shall be located or be engaged in business. - ^Act of August 28, 1894, § 32.

And if such corporation, company, or association shall refuse to com- ply with such request. - § 36, post, p. 369.

A statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or in- come received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required. - Act of August 28, 1897, § 32.

or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not exceeding \$10,000.

That if any person, corporation, joint-stock company, association, or in- surance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than \$20 or more than \$1000. - Subsection F, supra.

Shall forfeit as a, penalty the sum of one thousand dollars. — Act of June 30, 1864, § 120, and see same penalty in § 122; Act of July 13, 1866,

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The corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid. — Act of August 28, 1894, § 32.

The only penalty provided by § 122 of the Act of June 30,

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1864, as amended by the Act of July 13, 1866, is \$1,000 fine.

Erskine v. Milwaukee, etc. Ey. 94 TJ. S. 619, 24 L. ed. 298 (1876), Waite, C. J.

The penalty of \$1,000 was not increased by the Act of July 14, 1870.

Elliott V. Ey. Co. 99 U. S. 573, 25 L. ed. 292 (1878), Waite, O. J.

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions. That the provisions of this section shall extend to Porto Eieo and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively: And provided further, That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine islands are concerned be vested in the courts of the first instance of said islands: And provided further, That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof. — Sub-section N, supra.

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as

follows :

"Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or

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source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government." Before the amendment:

"Sec. 3167. If any collector or deputy collector, or any inspector, or other officer acting under the authority of any revenue law of the United States, divulges to any party, or makes known in any other manner than may be provided by law, the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, he shall be subject to a fine of not exceeding one thousand dollars, or to be imprisoned for not exceeding one year, or to both, at the discretion of the court, and shall be dismissed from office, and be forever thereafter incapable of holding any office under the Government."

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

"Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirma-

tion, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty[^] tax, or license, shall fail to make and exhibit a list or return re-

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quired by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person:

"Provided further. That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns

thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found ■ and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

That jurisdiction is hereby conferred upon the district courts of the United States for the districts within which any person summoned under this section to appear to testify or to produce books shall reside, to compel

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such attendance, production of books, and testimony by appropriate process. K. infra.

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"Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, stamp, or tax imposed by law, when not otherwise provided for, on or before the first Monday of March in each year, and in other cases before the day of levy, to make a list or return, verified by oath or affirmation, to the deputy collector of the district where located, of the articles or objects charged with a special duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a specific or ad valorem duty or tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any special tax as aforesaid, then, and in that case, it shall be the duty of the deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further. That in case any person shall be absent from his or her residence or place of business at the time a deputy collector shall call for the annual list or return, and no annual list or return has been rendered by such person to the deputy collector as required by law, it shall be the duty of such deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum, addressed to such person, requiring him or her to render to such deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails

to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent or contains any undervaluation or under-statement, it shall be lawful for the collector to summon such person or any other person, having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection-district where such person may be

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found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned."

"Sec. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes."

That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than

twenty dollars nor more than one thousand dollars. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding two thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution. - Subsection F, supra.

The collector or any deputy collector in every district shall enter into and upon the premises, if it be necessary, of every person therein who has taxable property and who refuses or neglects to render any return or list required by law, or who renders a false or fraudulent return or list, and make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list and return,

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according to the form prescribed, of the objects liable to tax, owned or possessed or under the care or management of such person, and the Commissioner of Internal Revenue shall assess the tax thereon, including the amount, if any, due for special tax, and in case of any return of a false or fraudulent list or valuation, he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or

absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall, in all cases, be collected at the same time and in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held good and sufficient for all legal purposes." - U. S. R. S. § 3176 before amendment.

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satis-

faction of the debt to that amount, require the surrender to him of such collector's receipt.

All persons, firms, copartnership, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagees of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and

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joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same, and they are each hereby made personally liable for such tax. - Subsection C, supra.

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.

Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax

fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having" possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned. U. S. E. S. § 3173 as amended by subsection I, supra.

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection,

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and refund of internal-revenue taxes not heretofore specifically-repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.

See U. S. R. S. §§ 3182, 3186, 3187, 3210, 3213-3216, 3220, 3229. These are explained in part I, supra.

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: Provided, That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general governments, thereof, respectively:

That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Inlands, when such construction is necessary to carry out its provisions. - Subsection H, supra.

And provided further, That th^e, jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands:

That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate-process. - Subsection K, supra.

And provided further, That nothing in this section shall be held to

exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof.

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions j also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government. — Subsection b, supra.

N. That for the purpose of carrying into effect the provisions of Section II of this Act, and to pay the expenses of assessing and collecting the income tax therein imposed, and to pay such sums

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as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may deem necessary, for information, detection, and bringing to trial and punishment persons guilty of violating the provisions of this section, or conniving at the same, in cases where such expenses are not otherwise provided for by law, there is hereby appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year ending June thirtieth, nineteen hundred and fourteen, the sum of \$800,000, and the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to appoint and pay from this appropriation all necessary officers, agents, inspectors, deputy collectors, clerks, messengers and janitors, and to rent such quarters, purchase such supplies, equipment, mechanical devices, and other articles as may be necessary for employment or use in the District of Columbia or any collection district in the United States, or any of the Territories thereof: Provided, That no agent paid from this appropriation shall receive compensation at a rate higher than that now received by traveling agents on accounts in the Internal Revenue Service, and no inspector shall receive a compensation higher than \$5 a day and \$3 additional in lieu of subsistence, and no deputy collector, clerk, messenger, or other employee shall be paid at a rate of compensation higher than the rate now being paid for the same or similar work in the Internal Revenue Service. In the office of the Commissioner of Internal Revenue at Washington, District of Columbia, there shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury one additional deputy commissioner, at a salary of four thousand dollars per annum; two heads of divisions, whose

compensation shall not exceed two thousand five hundred dollars per annum; and such other clerks, messengers, and employees, and to rent such quarters and to purchase such supplies as may be necessary: Provided, That for a period of two years from and after the passage of this Act the force of agents, deputy collectors, inspectors, and other employees not including the clerical force below the grade of chief of division employed in the Bureau of Internal Revenue in the city of Washington, District of Columbia authorized by this section of this Act shall be appointed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, under such rules and regulations as may be fixed by the Secretary of the Treasury to insure faithful and competent service, and with such compensation as the Commissioner of Internal Revenue may fix, with the approval of the Secretary of the Treasury, within the limitations herein prescribed: Provided further. That the force authorized to carry out the provisions of Section II of this Act, when not employed as herein provided, shall be employed on general internal-revenue work.

Section IV.

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T. If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

"Being of opinion that so much of the sections of this law as lays a tax on income from real and personal property is invalid, we are brought to the question of the effect of that conclusion upon these sections as a whole. It is elementary that the same statute may be in part constitutional and in part unconstitutional, and if the parts are wholly independent of each other, that which is constitutional may stand while that which is unconstitutional will be rejected. And in the case before us there is no question as to the validity of this act, except sections twenty-seven to thirty-seven, inclusive, which relate to the subject which has been under discussion ; and as to them we think the rule laid down by Chief Justice Shaw in *Warren v. Charlestown*, 2 Gray, 84, is applicable, that if the different parts 'are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to Marrant a belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature Avould not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' Or, as the point is put by Mr. Justice Matthews in *Poindexter v. Greenhow*, 114 U. S. 270, 304, 29 L. ed. 185, 197, 5 Sup. Ct. Rep. 903, 962 : 'It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but

these are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see, and to declare, that the intention of the legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute, for the law intended by the legislature, one they may never have been willing by itself to enact' And again, as stated by the same eminent judge in *Sprague v. Thompson*, 118 U. S. 90, 95, 30 L. ed. 115, 117, 6 Sup. Ct. Rep. 988, where it was "urged that certain illegal exceptions in a section of a statute

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might be disregarded, but that the rest could stand : 'The insuperable difficulty with the application of that principle of construction to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what any one can say it would have enacted in view of the illegality of the exceptions.' According to the census, the true valuation of real and personal property in the United States in 1890 was \$65,037,091,197, of which real estate with improvements thereon made up \$39,544,544,333. Of course, from the latter must be deducted, in applying these sections, all unproductive property and all property whose net yield does not exceed four thousand dollars ; but, even with such deductions, it is evident that the income from realty formed a vital part of the scheme for taxation embodied therein. If that be stricken out, and also the income from all invested personal property, bonds, stocks, investments of all kinds, it is obvious that by far the largest part of the anticipated revenue would be eliminated, and this would leave the burden of the tax to be borne by professions, trades, employments, or vocations; and in that way what was intended as a tax on capital would remain in substance a tax on occupations and labor. We cannot believe that such was the intention of Congress. We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations. But this is not such an act; and the scheme must be considered as a whole. Being invalid as to the greater part, and falling, as the tax would, if any part were held valid, in a direction which could not have been contemplated except in connection with the taxation considered as an entirety, we are constrained to conclude that sections twenty-seven to thirty-seven, inclusive, of the act, which became a law without the signature of the President on August 28, 1894, are wholly inoperative and void."

Pollock V. Farmers' Loan & Trust Co. 158 U. S. 601, 635-
«37, 39 L. ed. 1108, 1125, 1126, 15 Sup. Ct. Eep. 912, per
Fuller, C. J.

U. That unless otherwise herein specially provided, this Act shall
take effect on the day following its passage.
Approved. 9.10 p. m. October third, nineteen hundred and thirteen.
Foster Income Tax.— 49.

PART IV.

PREVIOUS INCOME TAX LAWS OF THE UNITED STATES.

ACT OF AUGUST 5, 1861.

12 St. at L. 292, 309.

Chapter XLV. — An Act to Peovide Increased Revenue
FEOM Imports, to Pay Interest on the Public Debt,
AND foe Other Purposes.

Section 49.

And be it further enacted. That, from and after the first day
of January next, there shall be levied, collected, and paid, upon
the annual income of every person residing in the United
States, whether such income is derived from any kind of
property, or from any profession, trade, employment, or voca-
tion carried on in the United States or elsewhere, or from
any other source whatever, if such annual income exceeds the
sum of eight hundred dollars, a tax of three per centum on
the amount of such excess of such income above eight hundred
dollars: Provided, That, upon such portion of said income as
shall be derived from interest upon treasury notes or other
securities of the United States, there shall be levied, collected,
and paid a tax of one tind one half per centum. Upon the in-
come, rents, or dividends accruing upon any property, securi-
ties, or stocks, owned in the United States by any citizen of

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the United States residing abroad, there shall be levied, col-
lected, and paid a tax of five per centum, excepting that por-
tion of said income derived from interest on Treasury notes
and other securities of the Government of the United States,
which shall pay one and one half per centum. The tax herein

provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said tax, to wit, the year next preceding the first of January, eighteen hundred and sixty-two; and the said taxes, when so assessed and made public, shall become a lien on the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid: Provided^ That in estimating said income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted.

Section 50.

And he it further enacted. That it shall be the duty of the President of the United States, and he is hereby authorized, by and with the advice and consent of the Senate, to appoint one principal assessor and one principal collector in each of the States and Territories of the United States, and in the District of Columbia, to assess and collect the internal duties or income tax imposed by this act, with authority in each of said officers to appoint so many assistants as the public service may require, to be approved by the Secretary of the Treasury. The said taxes to be assessed and collected under such regulations as the Secretary of the Treasury may prescribe. The said collectors, herein authorized to be appointed, shall give bonds, to the satisfaction of the Secretary of the Treasury, in such sums as he may prescribe, for the faithful performance of their respective duties. And the Secretary of the Treasury shall prescribe such reasonable compensation for the assessment and collection of said internal duties or income tax as may appear to him just and proper; not, however, to exceed in any case the sum of two thousand five hundred dollars per annum for the principal officers herein referred to, and twelve hundred dollars per annum for an assistant. The assistant collectors herein provided shall give bonds to the satisfaction

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of the principal collector for the faithful performance of their duties. The Secretary of the Treasury is further authorized to select and appoint one or more depositaries in each State for the deposit and safe-keeping of the moneys arising from the taxes herein imposed, when collected, and the receipt of the proper officer of such depositary to the collector for the moneys deposited by him shall be the proper voucher for such collector in the settlement of his account at the Treasury Department. And he is further authorized and empowered to make such officer or depositary the disbursing agent of the Treasury for the pajTment of all interest due to the citizens

of such State upon the Treasury notes or other Government securities issued by authority of law. And he shall also prescribe the forms of returns to be made to the department by all assessors and collectors appointed under the authority of this act. He shall also prescribe the form of oath or obligation to be taken by the several officers authorized or directed to be appointed and commissioned by the President under this act, before a competent magistrate duly authorized to administer oaths, and the form of the return to be made thereon to the Treasury Department.

Section 51.

And he it further enacted. That the tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-two, and all sums due and unpaid at that day shall draw interest thereafter at the rate of six per centum per annum; and if any person or persons shall neglect or refuse to pay after due notice said tax assessed against him, her, or them, for the space of more than thirty days after the same is due and payable, it shall be lawful for any collector or assistant collector charged with the duty of collecting such tax, and they are hereby authorized, to levy the same on the visible property of any such person, or so much thereof as may be sufficient to pay such tax, with the interest due thereon, and the expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of the sale thereof; and in case of the failure of any person or persons authorized to

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act as agent or agents for the collection of the rents or other income of any person residing abroad shall neglect or refuse to pay the tax assessed thereon (having had due notice) for more than thirty days after the thirtieth of June, eighteen hundred and sixty-two, the collector or his assistant, for the district where such property is located, or rents or income is payable, shall be and hereby is authorized to levy upon the property itself, and to sell the same, or so much thereof as may be necessary to pay the tax assessed, together with the interest and expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of sale. And in all cases of the sale of property herein authorized, the conveyance by the officer authorized to make the sale, duly executed, shall give a valid title to the purchaser, whether the property sold be real or personal. And the several collectors and assistants appointed under the authority of this act may, if they find no property to satisfy the taxes assessed upon any person by authority of the forty-ninth section of this act, and which such person neglects to pay as hereinbefore provided, shall have power, and it shall be their duty, to examine under oath the person assessed under this act, or any other person, and may sell at public auction, after ten days' notice, any stock, bonds, or choses in action, belonging to said person, or so much

thereof as will pay such tax and the expenses of such sale ; and in case he refuses to testify, the said several collectors and assistants shall have power to arrest such person and commit him to prison, to be held in custody until the same shall be paid, with interest thereon, at the rate of six per centum per annum, from the time when the same was payable as aforesaid, and all fees and charges of such commitment and custody. And the place of custody shall in all cases be the same provided by law for the custody of persons committed for any cause by the authority of the United States, and the warrant of the collector, stating the cause of commitment, shall be sufficient authority to the proper officer for receiving and keeping such person in custody until the amount of said tax and interest, and all fees and the expense of such custody, shall have been fully paid and discharged; which fees and expenses shall be the same as are chargeable under the laws of the United States in other cases of commitment and custody. And it shall be

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the duty of such collector to pay the expenses of such custody, and the same, with his fees, shall be allowed on settlement of his accounts. And the person so committed shall have the same right to be discharged from such custody as may be allowed by the laws of the State or Territory, or the District of Columbia, where he is so held in custody, to persons committed under the laws of such State or Territory, or District of Columbia, for the non-payment of taxes, and in the manner provided by such laws; or he may be discharged at any time by order of the Secretary of the Treasury.

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12 St. at L. 432.

Chaptee CXIX. — An Act to Provide Internal Revenue
TO Support the Government and to Pay Interest on
THE Public Debt.

Section 80.

Railroads, Steamboats, and Fleet-Boats.

And he it further enacted. That on and after the first day of August, eighteen hundred and sixty-two, any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any railroad or railroads upon which steam is used as a propelling power, or of any steamboat or other vessel propelled by steam power, shall be subject to and pay a duty of three per centum on the gross amount of all the receipts of such railroad or railroads or steam vessel for the

transportation of passengers over and upon the same; and any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any railroad or railroads using any other power than steam thereon, or owning, possessing, or having the care or management of any ferry-boat, or vessel used as a ferry-boat, propelled by steam or horse-power, shall be subject to and pay a duty of one and a half per centum upon the gross receipts of such railroad or ferry-boat, respectively, for the transportation of passengers over and upon said

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railroads, steamboats, and ferry-boats, respectively; and any person, or persons, firms, companies, or corporations, owning, possessing, or having the care or management of any bridge authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description over such bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. And the owner, possessor, or person or persons having the care and management of any such railroad, steamboat, ferry-boat, or other vessel, or bridge, as aforesaid, shall, within five days after the end of each and every month, commencing as hereinbefore mentioned, make a list or return to the assistant assessor of the district within which such owner, possessor, company, or corporation may have his or its place of business, or where any such railroad, steamboat, ferry-boat or bridge is located or belongs, respectively, stating the gross amount of such receipts for the month next preceding, which return shall be verified by the oath or affirmation of such owner, possessor, manager, agent, or other proper officer, in the manner and form to be prescribed from time to time by the Commissioner of Internal Revenue, and shall also, monthly, at the time of making such return, pay to the collector or deputy collector of the district the full amount of duties which have accrued on such receipts for the month aforesaid; and in case of neglect or refusal to make said lists or return for the space of five days after such return should be made as aforesaid, the assessor or assistant assessor shall proceed to estimate the amount received and the duties payable thereon, as hereinbefore provided in other cases of delinquency to make return for purposes of assessment; and for the purpose of making such assessment, or of ascertaining the correctness of any such return, the books of any such person, company, or corporation shall be subject to the inspection of the assessor or assistant assessor on his demand or request therefor; and in case of neglect or refusal to pay the duties as aforesaid when the same have been ascertained as aforesaid, for the space of five days after the same shall have become payable, the owner, possessor, or person having the management as aforesaid, shall pay, in addition, five per centum on the amount of such duties; and for any attempt knowingly to evade the payment of such

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duties, the said owner, possessor, or person having the care or management as aforesaid, shall be liable to pay a penalty of one thousand dollars for every such attempt, to be recovered as provided in this act for the recovery of penalties; and all provisions of this act in relation to liens and collections by distraint not incompatible herewith, shall apply to this section and the objects therein embraced: Provided j That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement with any person or company which may have paid, or be liable to pay, such fare to the contrary notwithstanding.

Section 81.

Railroad Bonds.

And he it further enacted. That on and after the first day of July, eighteen hundred and sixty-two, any person or persons owning or possessing, or having the care or management of any railroad company or railroad corporation, being indebted for any sum or sums of money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is, or shall be, stipulated to be paid, or coupons representing the interest shall be or shall have been issued to be paid, and all dividends in scrip or money or sums of money thereafter declared due or payable to stockholders of any railroad company, as part of the earnings, profits, or gains of said companies, shall be subject to and pay a duty of three per centum on the amount of all such interest or coupons or dividends whenever the same shall be paid; and said railroad companies or railroad corporations, or any person or persons owning, possessing, o^ having the care or management of any railroad company or railroad corporation, are hereby authorized and required to deduct and withhold from all payments made to any person, persons, or party, after the first day of July, as aforesaid, on account of any interest or coupons or dividends due and payable as aforesaid, the said duty of sum of three per centum ; and

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the duties deducted as aforesaid, and certified by the president or other officer of said company or corporation, shall be a receipt and discharge, according to the amount thereof, of said railroad companies or railroad corporations, and the owners, possessors, and agents thereof, on dividends and on bonds and other evidences of their indebtedness, upon which interest •or coupons are payable, holden by any person or party whatsoever, and a list or return shall be made and rendered within thirty days after the time fixed when said interest or coupons or dividends become due or payable, and as often as every six

months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the duties received and chargeable, as aforesaid, during the time when such duties have accrued or should accrue, and remaining unaccounted for; and there shall be annexed to every such list or return a declaration under oath or affirmation, in manner and form as may be prescribed by the Commissioner of Internal Revenue, of the president, treasurer, or some proper officer of said railroad company or railroad corporation, that the same contains a true and faithful account of the duties so withheld and received during the time when such duties have accrued or should accrue, and not accounted for, and for any default in the making or rendering of such list or return, with the declaration annexed, as aforesaid, the person or persons owning, possessing, or having the care or management of such railroad company or railroad corporation, making such default, shall forfeit, as a penalty, the sum of five hundred dollars ; and in case of any default in making or rendering said list, or of any default in the payment of the duty, or any part thereof, accruing or which should accrue, the assessment and collection shall be made according to the general provisions of this act.

Section- 82.

Banks, Trust Companies, Savings Institutions, and Insurance Companies.

And he it further enacted. That on and after the first day of July, eighteen hundred and sixty-two, there shall be levied, collected, and paid by all banks, trust companies, and savings

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institutions, and by all fire, marine, life, inland, stock, and mutual insurance companies, under whatever style or name known or called, of the United States or Territories, specially incorporated, or existing under general laws, or which may be hereafter incorporated or exist as aforesaid, on all dividends in scrip or money thereafter declared due or paid to stockholders, to policy-holders, or to depositors, as part of the earnings, profits, or gains of said banks, trust companies, savings institutions, or insurance companies, and on all sums added to their surplus or contingent funds, a duty of three per centum : Provided, That the duties upon the dividends of life insurance companies shall not be deemed due, or to be collected until such dividends shall be payable by such companies. And said banks, trust companies, savings institutions, and insurance companies are hereby authorized and required to deduct and withhold from all payments made to any person, persons, or party, on account of any dividends or sums of money that may be due and payable, as aforesaid, after the first day of July, eighteen hundred and sixty-two, the said duty of three per centum. And a list or return shall be made and rendered within thirty days after the time fixed when such dividends or sums of money shall be declared due and payable, and as often as every

six months, to the Commissioner of Internal Revenue, which shall contain a true and faithful account of the amount of duties accrued or which should accrue from time to time, as aforesaid, during the time when such duties remain unaccounted for, and there shall be annexed to every such list or return a declaration, under oath or affirmation, to be made in form and manner as shall be prescribed by the Commissioner of Internal Revenue, or the president, or some other proper officer of said bank, trust company, savings institution, or insurance company, respectively, that the same contains a true and faithful account of the duties which have accrued or should accrue and not accounted for, and for any default in the delivery of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company making such default shall, forfeitj as a penalty, the sum of five hundred dollars.

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Section 84.

And he it further enacted. That on the first day of October, Anno Domini eighteen hundred and sixty- two, and on the first day of each quarter of a year thereafter, there shall be paid by each insurance company, whether inland or marine, and by each individual or association engaged in the business of insurance from loss or damage by fire, or by the perils of the sea, the duty of one per centum upon the gross receipts for premiums and assessments by such individual, association, or company during the quarter then preceding; and like duty shall be paid by the agent of any foreign insurance company having an office or doing business within the United States.

Section 86.

Salaries and Pay of Officers and Persons in the Service
OF THE United States.

And be it further enacted. That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of three per centum on the excess above the said six hundred dollars ; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of three per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Rev-

enue, and entered as part of the internal duties; and the payroll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment.

act of july 1, 1862. 781

Section 88.

Advertisement.

And he it further enacted. That on and after the first day of August, eighteen hundred and sixty-two, there shall be levied, collected, and paid by any person or persons, firm, or company, publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, on the gross receipts for all advertisements, or all matters for the insertion of which in said newspaper or other publication, as aforesaid, or in extras, supplements, sheets, or fly-leaves accompanying the same, pay is required or received, a duty of three per centum; and the person or persons, firm, or company, owning, possessing, or having the care or management of any and every such newspaper or other publication, as aforesaid, shall make a list or return quarterly, commencing as heretofore mentioned, containing the gross amount of receipts as aforesaid, and the amount of duties which have accrued thereon, and render the same to the assistant assessor of the respective districts where such newspaper, magazine, review, or other literary or news publication is or may be published, which list or return shall have annexed a declaration, under oath or affirmation, to be made according to the manner and form which may be from time to time prescribed by the Commissioner of Internal Revenue, or the owner, possessor, or person having the care or management of such newspaper, magazine, review, or other publication, as aforesaid, that the same is true and correct, and shall also, quarterly and at the time of making said list or return, pay to the collector or deputy collector of the district, as aforesaid, the full amount of said duties ; and in case of neglect or refusal to comply with any of the provisions contained in this section, or to make and render said list or return, as aforesaid, for the space of thirty days after the time when said list or return ought to have been made, as aforesaid, the assistant assessor of the respective districts shall proceed to estimate the duties, as heretofore provided in other cases of delinquency; and in case of neglect or refusal to pay the duties, as aforesaid, for the space of thirty days after said duties become due and payable, said owner.

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possessor, or person or persons having the care or management of said newspapers or publications, as aforesaid, shall pay, in addition thereto, a penalty of five per centum on the amount

due; and in case of fraud or evasion, whereby the revenue is attempted to be defrauded or the duty withheld, said owners, possessors, or person or persons having the care or management of said newspapers or other publications, as aforesaid, shall forfeit and pay a penalty of five hundred dollars for each offense, or for any sum fraudulently unaccounted for; and all provisions in this act in relation to liens, assessments, and collections, not incompatible herewith, shall apply to this section and the objects herein embraced: Provided, That in all cases where the rate or price of advertising is fixed by any law of the United States, or Territory, it shall be lawful for the company, person or persons, publishing said advertisements, to add the duty or tax imposed by this act to the price of said advertisements, any law, as aforesaid, to the contrary notwithstanding: Provided further. That the receipts for advertisements to the amount of one thousand dollars, by any person or persons, firm or company, publishing any newspaper, magazine, review, or other literary, scientific, news publication, issued periodically, shall be exempt from duty: And provided further. That all newspapers whose circulation does not exceed two thousand copies shall be exempted from all taxes for advertisements.

Section 89.

Income Duty.

And he it further enacted. That for the purpose of modifying and re-enacting, as hereinafter provided, so much of an act, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved fifth of August, eighteen hundred and sixty-one, as relates to income tax; that is to say, sections forty-nine, fifty (except so much thereof as relates to the selection and appointment of depositaries), and fifty-one, be, and the same are hereby, repealed.

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Section 90.

And he it further enacted. That there shall be levied, collected, and paid annually, upon the annual gains, profits, or income of every person residing in the United States, whether derived from any kind of property, rents, interests, dividends, salaries, or from any professional trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars, and upon the annual

gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned by the United States by any citizen of the United States, residing abroad, except as hereinafter mentioned, and not in the employment of the government of the United States, there shall be levied, collected, and paid a duty of five per centum.

Section 91.

And he it further enacted. That in estimating said annual gains, profits, or income, whether subject to a duty, as provided in this act, of three per centum, or of five per centum, all other national, state, and local taxes, lawfully assessed upon the property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived, shall be first deducted from the gains, profits, or income of the person or persons who actually pay the same, whether owner or tenant^ and all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above six hundred dollars, or derived from interest or dividends on stocks, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, ex-

784 ACT OF JULY 1, 1862.

press, telegraph, steamboat, ferry-boat, or railroad company, or corporation, or on any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry-boat, express, or railroad companies, as aforesaid, or derived from advertisements, or on any articles manufactured, upon which specific, stamp or ad valorem duties shall have been directly assessed or paid, shall also be deducted; and the duty herein provided for shall be assessed and collected upon the income for the year ending the thirty-first day * of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter: Provided, That upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collected, and paid a duty not exceeding one and one-half of one per centum, any thing in this act to the contrary notwithstanding.

Section 92.

And he it further enacted. That the duties on income herein imposed shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-three, and in each year thereafter until and including the year eighteen

hundred and sixty-six and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June as, aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons ; and if any person or persons, or party, liable to pay such duty, shall neglect or refuse to pay the same, the amount due shall be a lien in favor of the United States from the time it was so due until paid, with the interest, penalties, and costs, that may accrue in addition thereto, upon all the property, and rights to property, stocks, securities, and debts of every de-

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scription from which the income upon which said duty is assessed or levied shall have accrued, or may or should accrue; and in default of the payment of said duty for the space of thirty days, after the same shall have become due, and be demanded as aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the Commissioner of Internal Revenue, upon the certificate of the collector or deputy collector that said duty is due and unpaid for the space of ten days after notice duly given of the levy of such duty, shall issue a warrant in form and manner to be prescribed by said Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for nonpayment, sufficient for the fees and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector or deputy collector of the sale, shall give title to the purchaser, of all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificates of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding, or claiming to hold, possession of such securities or other evidences of debt.

Section 93.

And ie it further enacted. That it shall be the duty of all

persons of lawful age, and all guardians and trustees, whether
Foster Income Tax. — 50.

7. so ACT OF JULY 1, 1862.

such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provision of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: Provided, That any party, in his or her own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty ; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

ACT OF MARCH 3, 1863. 787

ACT OF MARCH 3, 1863.

12 St. at L. 713, 718, 719.

Chapter LXXIV.— — An Act to Amend an Act entitled
"An Act to Provide Internal Revenue to Support
the Government and Protect Interest on the Public
Debt," Approved July First, Eighteen Hundred and
Sixty-two, and for other Purposes.

Section 1.

Be it enacted, * * * * *

That section ninety-one be amended by striking out the word "gas" wherever it occurs, and by striking out the words "or on any articles manufactured" after the word "advertisements." That section ninety-three be amended so that in case of neglect or refusal to make the returns referred to in said section the proceedings thereafter for the assessment and collection of the duty shall be in the same manner as provided for in other cases of neglect.

Section 3.

And he it further enacted, That any person or persons, firm, company, or corporation, who shall issue tickets or contracts of insurance against fatal or non-fatal injury to persons while travelling by land or water, shall pay a duty of one per centum on the gross amount of all the receipts for such insurance, and shall be subject to all the provisions and regulations of existing law applicable thereto, in relation to insurance companies : Provided, That no stamp duty shall be required upon tickets or contracts of insurance as aforesaid, when limited to fatal or non-fatal injury to persons while travelling.

Section 7.

And he it further enacted. That the commissioner of internal revenue be, and he is hereby, authorized to prescribe such meth:

788 ACT OF MAECII 3, 1863.

od for the cancellatioii of stamps as a substitute for or in addition to the method now prescribed by law, as he may deem expedient and effectual. And he is further authorized in his discretion to make the application of such method imperative upon the manufacturers of proprietary articles, and upon stamps of a nominal value exceeding twenty-five cents each.

Section 9.

And he it further enacted. That any person or persons, firms, companies, or corporations, owning or possessing, or having the care or management of any ferry-boat, or vessel used as a ferry-boat, propelled by steam or horse-power, in lieu of the duties now imposed by law, shall be subject to pay a duty of one and one-half of one per centum upon the gross receipts of such ferry-boat ; and the return and payment thereof shall be made in the manner prescribed in the act to which this act is an amendment.

Section 10.

And he it further enacted. That on and after the first day of

April, eighteen hundred and sixty-three, any person or persons, firms, companies, or corporations carrying on or doing an express business shall, in lieu of the tax and stamp duties imposed by existing laws, be subject to and pay a duty of two per centum on the gross amount of all the receipts of such express business, and shall be subject to the same provisions, rules, and penalties, as are prescribed in section eighty of the act to which this is an amendment, for the persons, firms, companies, or corporations owning or possessing or having the management of railroads, steamboats, and ferry-boats ; and all acts or parts of acts inconsistent herewith are hereby repealed.

Section 11.

And be it further enacted. That in estimating the annual gains, profit, or income, of any person, under the act to which this act is an amendment, the amount actually paid by such person for the rent of the dwelling-house or estate on which he resides shall be first deducted from the gains, profit, or income of such person.

ACT OF JUNE 30, 1864. 789

ACT OF JUJSTE 30, 1864.

13 St. at h. 223, 275.

Chaptee CLXXIII. - ^Aw Act to Provide iNTEETiITAL Eev-
ENTJE TO Support the Government, to Pay Interest
ON the Public Debt, and for other Purposes.

Section 103.

And he it further enacted. That every person, firm, company, or corporation, owning or possessing, or having the care or management of, any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach or other vehicle engaged or employed in the business of transporting passengers or property for hire, or in transporting the mails of the United States, on any canal, the water of which is used for mining purposes, shall be subject to and pay a duty of two and one-half per centum upon the gross receipts of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: Provided, That the duty hereby imposed shall not be charged upon receipts for the transportation of persons or property, or mails, between the United States and any foreign port; and any person or persons, firms, companies, or corporations, owning, possesing, or having the care or management of any toll-road, ferry, or bridge, authorized by law to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description, over such toll-road, ferry, or bridge, shall be subject to and pay a duty of three per centum on the gross amount of all their receipts of every description. But when the gross receipts of any such bridge or toll-road shall not exceed the amount necessarily expended to keep such bridge or road in

repair, no tax shall be imposed on such receipts : Provided, That all such persons, companies, and corporations shall have the right to add the duty or tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitation which may exist by law or by agreement with any person or company which may have paid or be liable to pay such fare to the contrary notwithstanding.

790 act of june 30, 1s(u).

Section 104.

And be it further enacted. That any person, firm, company, or corporation carrying on or doing an express business, shall be subject to and pay a duty of three per centum on the gross amount of all the receipts of such express business.

Section 105.

And he it further enacted. That there shall be levied, collected, and paid a duty of one and a half of one per centum upon the gross receipts of premiums, or assessments for insurance from loss or damage by fire or by the perils of the sea, made by every insurance company, whether inland or marine or fire insurance company, and by every association or individual engaged in the business of insurance against loss or damage by fire or by the perils of the sea; and by every person, firm, company, or corporation, who shall issue tickets, or contracts of insurance against injury to persons while traveling by land or water ; and a like duty shall be paid by the agent of any foreign insurance company having an office or doing business within the United States ; and that in the account or return to be rendered, they shall state the amount insured, renewed, or continued, the gross amount of premiums received and assessments collected, and the duties by law accruing thereon for the quarter then next preceding.

Section 107.

And be it further enacted. That any person, firm, company, or corporation owning or possessing or having the care or management of any telegraphic line by which telegraphic despatches or messages are received or transmitted, shall be subject to, and pay a duty of, five per centum on the gross amount of all receipts of such person, firm, company, or corporation.

Section 108.

And he it further enacted. That any person, firm, or corporation, or the manager or agent thereof, owning, conducting, or having the care or management of any theatre, opera, circus,

ACT OF JUNE 30, 18G4.

museum, or other public exhibition of dramatic or operatic representations, plays, performances, musical entertainments, feats of horsemanship, acrobatic sports, or other shows which are opened to the public for pay, but not including occasional concerts, school exhibitions, lectures, or exhibitions of works of art, shall be subject to and pay a duty of two per centum on the gross amount of all receipts derived by such person, firm, company, or corporation from such representations, plays, performances, exhibitions, shows, or musical entertainments.

Section' 109.

And he it further enacted. That any person, firm, company, or corporation, owning or possessing, or having the care or management of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any ferry, toll-road or bridge, as enumerated and described in section one hundred and two (three) of this act ; or carrying on or doing an express business ; or engaged in the business of insurance, as hereinbefore described ; or owning or having the care and management of any telegraph line, or owning, possessing, leasing, or having the control or management of any circus, theatre, opera, or museum, shall within twenty days after the end of each and every month, make a list or return in duplicate to the assistant assessor of the district, stating the gross amount of their receipts, respectively, for the month next preceding, which return shall be verified by the oath or affirmation of such owner, possessor, manager, agent, or other proper officer, in the manner and form to be prescribed from time to time by the Commissioner of Internal Revenue; and shall also pay to the collector the full amount of duties which have accrued on such receipts for the month aforesaid. And in case of neglect or refusal to make said list or return for the space of ten days after such return should have been made as aforesaid, the assessor or assistant assessor shall proceed to estimate the amount received and the duties payable thereon, and shall add thereto ten per centum, as hereinbefore provided in other cases of delinquency, to make return for purposes of assessment ; and for the purpose of making such assessment, or of ascertaining the correctness of any such return, the books of any such person, firm, company, or corporation shall be subject

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to the inspection of the assessor or assistant assessor on his demand or request therefor. And in case of neglect or refusal to pay the duties, with the addition aforesaid, when the same have been ascertained, for the space of ten days after the same shall have become payable, the owner, possessor, or person having the

management as aforesaid, shall pay, in addition, ten per centum on the amount of such duties and addition ; and for any attempt knowingly to evade the payment of such duties, the said owner, possessor, or person having the care or management as aforesaid, shall be liable to pay a penalty of one thousand dollars for every such attempt, to be recovered as provided in this act for the recovery of penalties. And all provisions of this act in relation to liens and collections by distraint, not incompatible herewith, shall apply to this section and the objects therein embraced.

Section 110.

And he it further enacted, That there shall be levied, collected, and paid a duty of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking ; and a duty of one twenty-fourth of one per centum each month as aforesaid, upon the average amount of the capital of any bank, association, company, or corporation, or person engaged in the business of banking beyond the amount invested in United States bonds ; and a duty of one twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional duty of one sixth of one per centum, each month, upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person, and upon any amount of such circulation, beyond the average amount of the circulation that had been issued as afore-

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said by any such bank, association, corporation, company, or person, for the six months preceding the first day of July, eighteen hundred and sixty-four. And on the first Monday of August next, and of each month thereafter, a true and accurate return of the amount of circulation, of deposit, and of capital as aforesaid, for the previous month, shall be made and rendered in duplicate by each of such banks, associations, corporations, companies, or persons to the assessor of the district in which any such bank, association, corporation, or company may be located, or in which such person may reside, with a declaration annexed thereto, and the oath or affirmation of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amount of circulation, deposits, and capital as aforesaid, subject to duty as aforesaid, and shall transmit the duplicate

of said return to the Commissioner of Internal Revenue, and within twenty days thereafter shall pay to the said Commissioner of Internal Revenue the duties hereinbefore prescribed upon the said amount of circulation, of deposits, and of capital, as aforesaid, and for any refusal or neglect to make or to render such return and payment as aforesaid, any such bank, association, corporation, company, or person so in default shall be subject to and pay a penalty of two hundred dollars, besides the additional penalty and forfeiture in other cases provided in this act; and the amount of circulation, deposit, and capital, as aforesaid, in default of the proper return, shall be estimated by the assessor or assistant assessor of the district as aforesaid, upon the best information he can obtain; and every such penalty, together with the duties as aforesaid, may be recovered for the use of the United States in any court of competent jurisdiction. And in case of banks with branches ; the duty herein provided for shall be imposed upon the circulation of each branch, severally, and the amount of capital of each branch shall be considered to be the amount allotted to such branch ; and so much of an act entitled "An act to provide ways and means for the support of the government," approved March three, eighteen hundred and sixty-three, as imposes any tax on banks, their

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circulation, capital, or deposits, other than is herein provided, is hereby repealed : Provided, That this section shall not apply to associations which are taxed under and by virtue of the act "to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof ;" nor to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking: And provided, further. That any bank ceasing to issue notes for circulation, and which shall deposit in the Treasury of the United States, in lawful money, the amount of its outstanding circulation, to be redeemed at par, under such regulations as the Secretary of the Treasury may prescribe, shall be exempt from any tax upon such circulation.

Section 111.

And he it further enacted. That every individual partnership, firm, and association, being proprietors, managers, or agents of lotteries, shall pay a tax of five per centum on the gross amount of the receipts from the said business; and all persons making such sales shall, within ten days after the first day of each and every month, make and render a list or return in duplicate to the assistant assessor of the gross amount of such sales, made as aforesaid, with the amount of duty which has accrued or should accrue thereon ; which list shall have annexed thereto a declaration under oath or affirmation, in such form and signed by such officer, agent, or clerk, as may be prescribed by the Commissioner of Internal Revenue, that the same is true and correct, and that the said proprietors, managers, and agents shall on or

before the twentieth day of each and every month, as aforesaid, pay the collector or deputy collector of the proper district the amount of the duty or tax as aforesaid. And in default of making such lists or returns, the said proprietors, managers, and agents, and all other persons making such sales, shall be subject to and pay a penalty of one thousand dollars, besides the additions, penalties, and forfeitures in other cases provided ; and the said proprietors, managers, and agents shall, in default of paying the said duty or tax at the time herein required, be subject to and pay a penalty of one thousand dollars, or be imprisoned

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not exceeding one year. In all cases of delinquency in making said list, return, or payment, the assessments and collections shall be made in the manner prescribed in the provisions of this act in relation to manufactures, articles, and products: Provided, That the managers of any sanitary fair, or of any charitable, benevolent, or religious association, may apply to the collector of the district and present to him proof that the proceeds of any contemplated lottery, raffle, or gift enterprise will be applied to the relief of sick and wounded soldiers, or to some other charitable use, and thereupon the commissioner shall grant a permit to hold such lottery, raffle, or gift enterprise, and the said sanitary fair, or charitable or benevolent association, shall be exempt from all charge, whether from tax or license, in respect of such lottery, raffle, or gift enterprise: Provided, further. That nothing in this section contained shall be construed to legalize any lottery.

Section 114.

And he it further enacted. That there shall be levied, collected, and paid by any person or persons, firm, or company, publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, on the gross receipts for all advertisements, or all matters for the insertion of which in said newspapers or other publication, as aforesaid, or in extras, supplements, sheets, or fly-leaves, accompanying the same, pay is required or received, a duty of three per centum ; and the person or persons, firm or company, owning, possessing, or having the care or management of any and every such newspaper, or other publication, as aforesaid, shall make a list or return on the first day of January, April, July, and October of each year, containing the gross amount of receipts as aforesaid, and the amount of duties which have accrued thereon, and render the same in duplicate to the assistant assessor of the district where such newspaper, magazine, review, or other literary or news publication is ■ or may be published ;

which list or return shall have annexed a declaration, under oath or affirmation, to be made according to the manner and form which may be from time to time prescribed by the Commissioner of Internal Revenue, of the owner, possessor, or per-

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son having the care or management of such newspaper, magazine, review, or other publication, as aforesaid, that the same is true and correct; and shall also, quarterly, within ten days after the time of making said list or return, pay to the collector or deputy collector of the district the full amount of said duties. And in case of neglect or refusal to comply with any of the provisions contained in this section, or to make and render said list or return, for the space of ten days after the time when said list or return ought to have been made, as aforesaid, the assistant assessors of the respective districts shall proceed to estimate the duties as heretofore provided in other cases of delinquency; and in case of neglect or refusal to pay the duties, as aforesaid, for the space of ten days after said duties become due and payable, and have been demanded, said owner, possessor, or person or persons having the care or management of said newspapers or publications, as aforesaid, shall pay, in addition thereto, a penalty of ten per centum on the amount due. And in case of fraud or evasion, whereby the revenue is attempted to be defrauded, or the duty withheld, said owners, possessors, or person or persons having the care or management of said newspapers or other publications, as aforesaid, shall forfeit and pay a penalty of one thousand dollars for each offense, or for any sum fraudulently unaccounted for. And all provision-i in this act in relation to returns, additions, penalties, forfeitures,, liens, assessments, and collection, not incompatible herewith, shall apply to this section and the objects herein embraced : Provided, That in all cases where the rate or price of advertising is fixed by any law of the United States, state, or territory, it shall be lawful for the company, person or persons, publishing said advertisements, to add the duty or tax imposed by this act to the price of said advertisements, any law to the contrary notwithstanding ; and that the receipts for advertisements to the amount of six hundred dollars annually, by any person or persons, firm, or company publishing any newspaper, magazine, review, or other literary, scientific, or news publication, issued periodically, shall be exempt from duty: And provided, further. That all newspapers whose average circulation does not exceed two thousand copies shall be exempted from all taxes for advertisements.

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Section 116.

Aiid he it further enacted. That there shall be levied, col-

lected, and paid annually upon the annual gains, profits, or income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, salaries, or from any profession, trade, employment, or vocation, carried on in the United States, or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of six hundred dollars, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars; and a duty of seven and one half of one per centum per annum on the excess over five thousand dollars and not exceeding ten thousand dollars; and a duty of ten per centum on the excess over ten thousand dollars. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, or income for the year ending the thirty-first day of December next, preceding the time for levying, collecting, and paying said duty: Provided, That income derived from interest upon notes, bonds, and other securities of the United States^ shall be included in estimating incomes under this section: Provided, That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife, except in cases where such separate income shall be derived from the separate and individual estates, gains, or labor of the wife or child: And provided, further. That net profits realized by sales of real estate purchased within the year, for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year.

Section 117.

And he it further enacted. That in estimating the annual gains, profits, or income of any person, all national, state, and municipal taxes, other than the national income tax, lawfully

798 ACT OF JUXE 30, 18G4.

assessed within the year upon the property or sources of income- of any person, as aforesaid, from which said annual gains,, profits, or income is or should be derived, shall be deducted, in addition to six hundred dollars, from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above the rate of six hundred dollars per annum; and there shall also be deducted the income derived from dividends on shares in the capital stock of any bank, trust company, savings institution, insurance, railroad, canal, turnpike, canal navigation, or slack-water company, and the interest on any bonds, or other evidences of indebtedness of any such corporation, or company, whi"^^h shall have been assessed

and the tax paid, as hereinafter provided; also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person, or by his family, in his own right, or in the right of his wife, shall not be included and assessed as part of the income. of such person. In estimating the annual gains, profits, or income of any person, the interest over and above the amount of interest paid upon all notes, bonds, and mortgages, or other forms of indebtedness, bearing interest, whether due and paid or not, if good and collectable, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and the increased value of live stock, whether sold or on hand, and the amount of sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetable, or other productions of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, shall be included and assessed as part of the income of such person for each year, and the gains and profits of all companies, whether incorporated or partnership, other than the companies specified in this section, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise. In esti-

ACT OF JUNE 30, 1864. 79!)

mating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to carry on land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual or ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate : Provided, That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, in such manner as the Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, may prescribe.

Section 118.

And be it further enacted. That it shall be the duty of all persons of lawful age, and all guardians and trustees, whether

such trustees are so by virtue of their office as executors, administrators, or in other fiduciary capacity, to make a list or return under oath or affirmation, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which he resides, of the amount of his or her income, or the income of such minors or persons as may be held in trust as aforesaid, according to the requirements hereinbefore mentioned, stating the sources from which said income is derived, whether from any kind of property, or the purchase and sale of property, rents, interest, dividends, salaries, or from any profession, trade, employment, or vocation, or otherwise. And in case of neglect or refusal to make such return, the assessor or assistant assessor

800 ACT OF JUNE 30, 1864.

shall assess the amount of his or her income, and the duty thereon, in the same manner as is provided for in other cases of neglect and refusal to furnish lists or returns in the provisions of this act, v^here not otherwise incompatible; and the assistant assessor may increase the amount of the list or return, or of any party making such return, if he shall be satisfied that the same is understood: Provided, That any party in his or her oven behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of ■which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or may declare that he or she has been assessed elsewhere in the same year for, and has paid an income duty under authority of the United States, and shall thereupon be exempt from income duty in said district; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, such party may be permitted to declare, under oath or affirmation, the amount of annual income, or the amount held in trust, as aforesaid, liable to be assessed, and the same, so declared, shall be received by such assistant assessor as true, and as the sum upon which duties are to be assessed and collected, except that the deductions claimed in such cases shall not be made or allowed until approved by the assistant assessor. But any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon shall be final ; and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Eevenue.

Section 119.

And he it further enacted. That the duties on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and

unpaid for thirty days after the thirtieth of June, as afore-

ACT OF JUNE 30, 1864. 801

said, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estate of deceased and insolvent persons. And if any person liable to pay such duty shall neglect or refuse to pay the same, after such demand, the amount due shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property and rights to property belonging to such person; and in default of the payment of said duty aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the collector, after demands duly given, as aforesaid, shall issue a warrant, in form and manner to be prescribed by the Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for non-payment, sufficient for the fees, costs, and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector shall vest in the purchaser all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether canceled or not. And said certificates of sale of the collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Foster Income Tax. - 51.

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Section 120.

And he it further enacted. That there shall be levied and collected a duty of five per centum on all dividends in scrip or money thereafter declared due, and whenever the same shall

be payable, to stockholders, policy-holders, or depositors, as part of the earnings, income, or gains, of any bank, trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds; and said banks, trust companies, savings institutions, and insurance companies shall pay the said duty, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid, the said duty of five per centum. And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted, and the duty paid to the Commissioner of Internal Revenue within thirty days after the time when any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of duties as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation, in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of the duties as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company, making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the duty as required, or any part thereof, the assessment and collection of the duty and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal: Provided, That the

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duty upon the dividends of life insurance companies shall not be deemed due or to be collected until such dividends shall be payable by such companies, nor shall the portion of premiums returned by mutual life insurance companies to their policyholders be considered as dividends or profits under this act.

Section 121.

And he it further enacted. That any bank legally authorized to issue notes as circulation, which shall neglect or omit to make dividends or additions to its surplus or contingent fund as often as once in six months, shall make a list or return in duplicate, under oath or affirmation of the president or cashier, to the assessor or assistant assessor of the district in which it is located, on the first day of January and July in each year, or within thirty days thereafter, of the amount of profits which have accrued or been earned and received by said bank

during the six months next preceding said first days of January and July; and shall present one of said lists or returns and pay to the collector of the district a duty of five per centum on such profits; and in case of default to make such list or return and payment within the thirty days as aforesaid, shall be subject to the provisions of the foregoing section of this act: Provided, That when any dividend is made which includes any part of the surplus or contingent fund of any bank, trust company, savings institution, insurance or railroad company, which has been assessed and the duty paid thereon, the amount of duty so paid on that portion of the surplus or contingent fund may be deducted from the duty on such dividend.

Section 122.

And he it further enacted. That any railroad, canal, turnpike, canal navigation, or slack-water company indebted for any money for which bonds or other evidences of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip, or money due or payable to its

804 ACT OF JUNE 30, 1864.

stockholders, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever the same shall be payable; and said companies are hereby authorized to deduct and withhold from all payments, on account of any interest, or coupons and dividends due and payable as aforesaid, the duty of five per centum; and the payment of the amount of said duty so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon, on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor in duplicate, and one of said lists or returns shall be transmitted and the duty paid to the Commissioner of Internal Revenue within thirty days after the time when said interest, coupons, or dividends become due and payable, and as often as every six months; and said list or return shall contain a true and faithful account of the amount of the duty, and there shall be annexed thereto a declaration of the president or treasurer of the company, under oath or affirmation, in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of said duty. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment

of the duty as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars ; and in case of any default in making or rendering said list or return, or of the payment of the duty, or any part thereof, as aforesaid, the assessment and collection of the duty and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

Section 123.

And he it further enacted. That there shall be levied, col-

ACT OF JUNE 30, 1864. 805

lected, and paid, on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, virhen exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of five per centum, and shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer,, or when settling or adjusting the accounts of any such officer^ to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the Commissioner of Internal revenue: Provided, That payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.

Section 178.

That consuls of foreign countries in the United States, who are not citizens thereof, shall be, and hereby are, exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in such countries: Provided, That the governments which such consuls may represent shall extend similar exemptions to consuls of the United States.

806 JOINT EESOLUTION OF JULY 4, 1864.

JOIISTT EESOLUTION OF JULY 4, 1864.

13 Stat, at L. 417.

[No. 77] Joint Eesolution Imposing a Special Inoomb

Duty.

That in addition to the income duty already imposed by law, there shall be levied, assessed, and collected on the first day of October, eighteen hundred and sixty-four, a special income duty upon the gains, profits, or income for the year ending the thirty-first day of December next preceding the time herein named, by levying, assessing, and collecting said duty of all persons residing within the United States, or of citizens of the United States residing abroad, at the rate of five per centum on all sums exceeding six hundred dollars, and the same shall be levied, assessed, estimated, and collected, except as to the rate, according to the provisions of existing laws for the collection of an income duty, annually, where not applicable hereto; and the Secretary of the Treasury is hereby authorized to make such rules and regulations as to time and mode, or other matters to enforce the collection of the special income duty herein provided for, as may be necessary: Provided, That in estimating the annual gains, profits, or income, as aforesaid, for the foregoing special income duty, no deductions shall be made for dividends or interest received from any association, corporation, or company, nor shall any deduction be made for any salary or pay received.

ACT OF MAECH 3, 1865.

13 St. at L. 469, 479.

Chapter LXXVIII. — An Act to Amend an Act entitled "An Act to Provide Inteenal Eevenue to Suppoet the Goveenment, to Pay Inteeest on the Public Debt, and foe othee Pueposes," Appeoved June Thie-TiETH, Eighteen Hundeed and Sixty-Foue.

Section 1.

Be it enacted, *****

That section one hundred and three be amended by adding

ACT OF MAECII 3, 1865.

the following after the word "vehicle," where it occurs the second time in the section: "Provided, That this section shall not apply to those teams, wagons, and vehicles used in the transportation of silver ores from the mines where the same is (are) excavated to the place where they are reduced or worked."

That section one hundred and three be further amended by inserting after the words "and any foreign port," the words, ^'but such duty shall be assessed upon the transportation of persons and property shipped from a port within the United States, through a foreign territory, to a port within the United States, and shall be asserted upon, and collected from, persons, firms, companies, or corporations within the United States receiving such freight or transportation." And that section one hundred and three be amended by adding at the end of said section the following: "And provided, further. That no tax under this section shall be assessed upon any person whose gross receipts do not exceed one thousand dollars per annum."

That section one hundred and five be amended by striking out, at the end thereof, the words "for the quarter then next preceding."

That section one hundred and nine be amended by striking out, after the words "one hundred and" the word "two" and inserting in lieu thereof the word "three."

That section one hundred and ten be amended by striking out, after the words "and redemption thereof," the words "nor to any savings bank having no capital stock, and whose business is confined to receiving deposits and loaning the same on interest for the benefit of the depositors only, and which do no other business of banking."

That section one hundred and sixteen be amended by striking out all after the enacting clause, and inserting, in lieu thereof, the following:

"That there shall be levied, collected, and paid annually upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the

808 ACT OF JtAECH 3, 1S65.

United States or elsewhere, or from any other source whatever, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars; and

in ascertaining the income of any person liable to an income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the Commissioner of Internal Revenue, or other officer authorized to receive the same, shall be included : and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of December, next preceding the time for levying, collecting, and paying said duty: Provided, That incomes derived from interest upon notes, bonds, and other securities of the United States, and also all premiums on gold and coupons shall be included in estimating incomes under this section. Provided, further. That only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife: And provided, further. That net profits realized by sales of real estate purchased within the year, for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year, for which income is estimated, shall be deducted from the income of such year."

That section one hundred and seventeen be amended by striking out all after the enacting clause, and inserting in lieu thereof the following :

"That in estimating the annual gains, profits, and income of any person, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income of the person who ' has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services, in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above the rate of six hundred dollars per annum; also the amount paid by any person for

ACT OF MAKCI 3, 18G5. 809

the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead, used or occupied by any person or by his family, in his own right, or in the right of his wife, shall not be included and assessed as part of the income of such person. In estimating the annual gains, profits, or income of any person, the interest, received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, less the interest paid by or due from such person, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and of live stock, and the amount of live stock, sugar, wool, butter, cheese, pork, beef, mutton,

or other meats, hay and grain, or other vegetables or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included and assessed as part of the income of such person for each year, and his share of the gains and profits of all companies, whether incorporated or partnership, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise. In estimating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to cultivate land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years, shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: Provided, That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have

810 ACT OF MAKCI-I 3, 1865.

accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income to whom the same shall have been paid, in such manner as the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, may prescribe."

That section one hundred and eighteen be amended by striking out all after the enacting clause, and inserting in lieu thereof the words, "That it shall be the duty of all persons of lawful age to make and render a list or return, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardians or trustees reside, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee ; and the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any person, guardian, or trustee shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the

assessor or the assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts or any other evidence, and to add twenty-five per centum as a penalty to the amount of the duty due on such list in all cases of wilful neglect or refusal to make and render a list or return, and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of duty ascertained to be due, the duty and the additions thereto as penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false and fraudulent return: Provided, That any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be pre-

ACT OF MARCH 3, 1865. 811

scribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty elsewhere in the same year, under authority of the United States, upon his or her gains and profits, as prescribed by law, and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty in said district; •or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of annual income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue."

That section one hundred and nineteen be amended by striking out the words "for thirty days," and after the words "for ten days after," inserting the words "notice and."

That section one hundred and twenty be amended by striking out, at the end thereof, the word "act," and inserting in lieu thereof the word "section."

812 ACT OF JULY 13, 1866.

ACT OF JULY 13, 1866.

14 St. at L. 98, 135.

Chaptee OLXXXIV. — An Act to Eeduce Internal Taxation AND TO Amend an Act entitled "An Act to Peovide Internal Revenue to Support the Govern-ment, TO Pat Interest on the Public Debt, and for OTiTER Purposes," Approved June Thietieth, Eight-teen Hunded and Sixty-four, and Acts Amendatory thereof.

Section 9.

Be it enacted, * * * * *

That section one hundred and three he amended by striking out all after the enacting clause, and inserting in lieu there- of the following: That every person, firm, company, or cor- poration owning or possessing or having the care or manage- ment of any railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or any stage-coach, or other vehicle, except hacks or carriages not running on continuous routes, engaged or employed in the business of transporting passengers for hire, or in transporting the mails of the United States upon contracts made prior to August first, eighteen hundred and sixty-six, shall be subject to and pay a tax of two and one half per cent of the gross receipts from passengers and mails of such railroad, canal, steamboat, ship, barge, canal-boat, or other vessel, or such stage-coach or other vehicle: Provided, That the tax hereby imposed shall not be assessed upon re- ceipts for the transportation of persons or mails between the United States and any foreign port ; but such tax shall be as- sessed upon the transportation of persons from a port within the United States through a foreign territory to a port with- in the United States, and shall be assessed upon and collected from persons, firms, companies, or corporations within the United States, receiving hire or pay for such transportation of persons or mails; and so much of section one hundred and nine as requires returns to be made of receipts hereby exempted

ACT 0:F JULY 13, 1866. 813

from tax when derived from transporting property for hire is hereby repealed: Provided, also, That any person or persons, firms, companies, or corporations owning, possessing, or hav- ing the care or management of any toll-road, ferry, or bridge, authorized by 'aw to receive toll for the transit of passengers, beasts, carriages, teams, and freight of any description, over such toll-road, ferry, or bridge, shall be subject to and pay a tax of three per centum of the gross amount of all their re- ceipts of every description ; but when the gross receipts of any such bridge or toll-road, for and during any term of twelve -consecutive calendar months, shall not exceed the amount neces- sarily expended during said term to keep such bridge or road in repair, no tax shall be assessed upon such receipts during

the month next following any such term: Provided, further. That all such persons, companies, and corporations shall, until the thirtieth day of April, eighteen hundred and sixty-seven, have the right to add the tax imposed hereby to their rates of fare whenever their liability thereto may commence, any limitations which may exist by law or by agreement, with .■any person or company which may have paid or be liable to pay such fare, to the contrary notwithstanding. And whenever the addition to any fare shall amount only to the fraction of one cent, any person, or company, liable to the tax ■of two and a half per centum, may add to such fare one cent in lieu of such fraction; and such person or company shall keep for sale, at convenient points, tickets in packages of twenty and multiples of twenty, to the price of which only an amount equal to the revenue tax shall be added : And provided, further. That no tax under the foregoing provisions of this section shall be assessed upon any person, firm, company, or •corporation, whose gross receipts do not exceed one thousand ■dollars per annum: And provided, further. That all boats, barges, and flats not used for carrying passengers nor propelled by steam or sails, which are floated or towed by tug-boats or horses, and used exclusively for carrying coal, oil, minerals, or agricultural products to market, shall be required hereafter, in lieu of enrolment fees or tonnage tax, to pay an annual special tax, for each and every such boat of a capacity exceeding twenty-five tons, and not exceeding one hundred tons, five dollars; and when exceeding one hundred tons, shall]e re-

814 ACT OF JULY 13, 1866.

quired to pay ten dollars; and said tax shall be assessed an<J collected as other special taxes provided for in this act.

That section one hundred and seven be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That any person, firm, company, or corporation owning or possessing or having the care or management of any telegraphic line by which telegraphic despatches or messages are received or transmitted, shall be subject to and pay a tax of three per centum on the gross amount of all receipts of such person, firm, company, or corporation.

That section one hundred and ten be amended by striking out all after the enacting clause, and inserting in lieu thereof the following: That there shall be levied, collected, and paid a tax of one twenty-fourth of one per centum each month upon the average amount of the deposits of money, subject to payment by check or draft, or represented by certificates of deposit or otherwise, whether payable on demand or at some future day, with any person, bank, association, company, or corporation engaged in the business of banking; and a tax of one twenty-fourth of one per centum each month, as aforesaid, upon the capital of any bank, association, company, or corporation, and on the capital employed by any person in the business of banking beyond the average amount invested in

United States bonds; and a tax of one twelfth of one per centum each month upon the average amount of circulation issued by any bank, association, corporation, company, or person, including as circulation all certified checks and all notes and other obligations calculated or intended to circulate or to be used as money, but not including that in the vault of the bank, or redeemed and on deposit for said bank; and an additional tax of one sixth of one per centum, each month, upon the average amount of such circulation, issued as aforesaid, beyond the amount of ninety per centum of the capital of any such bank, association, corporation, company, or person. And a true and accurate return of the amount of circulation, of deposit, and of capital, as aforesaid, and of the amount of notes of persons, state banks, or state banking associations, paid out by them for the previous month, shall be made and rendered monthly by each of such banks, associations, corporations, companies, or persons to the assessor of the district in

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which any such bank, association, corporation, or company may be located, or in which such person has his place of business, with a declaration annexed thereto, and the oath or affirmation of such person, or of the president or cashier of such bank, association, corporation, or company, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful statement of the amounts subject to tax as aforesaid; and for any refusal or neglect to make or to render return and payment, any such bank, association, corporation, company, or person so in default, shall be subject to and pay a penalty of two hundred dollars, besides the additional penalty and forfeitures in other cases provided by law; and the amount of circulation, deposit, capital, and notes of persons, state banks, and banking association paid out, as aforesaid, in default of the proper return, shall be estimated by the assessor or assistant assessor of the district as aforesaid, upon the best information he can obtain ; and every such penalty may be recovered for the use of the United States in any court of competent jurisdiction. And in the case of banks with branches, the tax herein provided for shall be assessed upon the circulation of each branch, severally, and the amount of capital of each branch shall be considered to be the amount allotted to such branch; and so much of an act entitled "an act to provide ways and means for the support of the government," approved March three, eighteen hundred and sixty-three, as imposes any tax on banks, their circulation, capital, or deposits, other than is herein provided, is hereby repealed: Provided, That this section shall not apply to associations which are taxed under and by virtue of the act "to provide a national currency secured by a pledge of the United States bonds, and to provide for the circulation and redemption thereof." And the deposits in associations or companies known as provident institutions, savings banks, savings funds, or savings institutions, having no capital stock and doing no other business than receiving

deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to the association or company, shall be exempt from tax on so much of their deposits as they have invested in securities of the United States, and on all deposits, less than five hun-

816 ACT OF JULY 13, 1866.

dred dollars, made in the name of any one person; and the returns required to be made by such provident institutions and savings banks after July, eighteen hundred and sixty-six, shall be made on the first Monday of January and July of each year, in such form and manner as may be prescribed by the Commissioner of Internal Revenue.

That section one hundred and eleven be amended by inserting after the words "proprietors, managers, or agents of lotteries," the words : "and all lottery ticket dealers."

That section one hundred and fourteen be amended by inserting after the word "periodically," in the first sentence of said section, the words : "or otherwise, or publishing any guide, almanac, catalogue, directory, or any other paper or book."

That section one hundred and sixteen be amended by inserting after the words, "on the excess over five thousand dollars," the following: "and a like tax shall be levied, collected, and paid, annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof."

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That the taxes on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer ; and to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased or insolvent persons.

That section one hundred and twenty be amended by striking out all after the enacting clause and inserting in lieu thereof the following: That there shall be levied and collected a tax of five per centum on all dividends in scrip or money thereafter declared due wherever, and whenever the same shall be payable, to stockholders, policy-holders, or depositors or parties whatsoever, including non-residents, whether citizens or aliens, as part of the earnings, income, or gains of any bank,

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trust company, savings institution, and of any fire, marine, life, inland insurance company, either stock or mutual, under whatever name or style known or called, in the United States or Territories, whether specially incorporated or existing under general laws, and on all undistributed sums, or sums made or added during the year to their surplus or contingent funds ; and said banks, trust companies, savings institutions, and insurance companies shall pay the said tax, and are hereby authorized to deduct and withhold from all payments made on account of any dividends or sums of money that may be due and payable as aforesaid the said tax of five per centum. And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid; and said list or return shall contain a true and faithful account of the amount of taxes as aforesaid ; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the bank, trust company, savings institution, or insurance company, under oath or affirmation in form and manner, as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of the taxes as aforesaid. And for any default in the making or rendering of such list or return, with such declaration annexed, the bank, trust company, savings institution, or insurance company making such default, shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of any default in the payment of the tax as required, or any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of the law in other cases of neglect and refusal: Provided J That the tax upon the dividends of life insurance companies shall not be deemed due until such dividends are payable; nor shall the portion of premiums returned by mutual life insurance companies to their policy-holders, nor the annual or semi-annual interest allowed or paid to the depositors in savings banks or savings institutions be considered as dividends.

That section one hundred and twenty-two be amended by striking out all after the enacting clause and inserting in Foster Income Tax. - 52.

818 ACT OF JULY 13, 1866.

lieu thereof the following: That any railroad, canal, turnpike, canal navigation, or slack-water company, indebted for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend in scrip or money due or payable to its stock-

holders, including non-residents, whether citizens or aliens, as part of the earnings, profits, income, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a tax of five per centum on the amount of all such interest, or coupons, dividends, or profits, whenever and wherever the same shall be payable, and to whatsoever party or person the same may be payable, including non-residents, whether citizens or aliens; and said companies are hereby authorized to deduct and withhold from all payments on account of any interest, or coupons, and dividends, due and payable as aforesaid, the tax of five per centum ; and the payment of the amount of said tax so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon on the bonds or other evidences of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or assistant assessor on or before the tenth day of the month following that in which said interest, coupons, or dividends become due and payable, and as often as every six months, and said list or return shall contain a true and faithful account of the amount of tax, and there shall be annexed thereto a declaration of the president or treasurer of the Company, under oath or affirmation in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of said tax. 4. and for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the tax as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or of

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the payment of the tax or any part thereof, as aforesaid, the assessment and collection of the tax and penalty shall be made according to the provisions of law in other cases of neglect or refusal.

That section one hundred and twenty-two be further amended by adding thereto the following proviso : Provided, That whenever any of the companies mentioned in this section shall be unable to pay the interest on their indebtedness, and shall in fact fail to pay such interest, that in such cases the tax levied by this section shall not be paid to the United States until said company resume the payment of interest on their indebtedness.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting in lieu thereof the following : That there shall be levied, collected, and paid on the salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or

service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a tax of five per centum on the excess above the said six hundred dollars, and a tax of ten per centum on the excess over five thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, or upon settling and adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax, and they shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the Commissioner of Internal Revenue, and entered as a part of the internal tax; and the pay-roll, receipts, or account of officers or persons paying such tax, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted

820 ACT OF MARCH 2, 1867.

and paid over to the Commissioner of Internal Revenue or other officer authorized to receive the same: Provided, That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: Provided, further. That this section shall not apply to payments made to mechanics or laborers employed upon public works.

ACT OF MARCH 2, 1867.

14 St. at L. 471, 477.

Chapter CLXIX. — An Act to Amend Existing Laws Relating TO Internal Revenue, and for other Pur-

POSES.

Section 13.

And be it further enacted. That the act entitled "An act to provide Internal Revenue to support the government, to pay interest on the public debt, and for other purposes," approved June thirty, eighteen hundred and sixty-four, and as subsequently amended, be further amended as follows, namely: —

Income. — That section one hundred and sixteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, as follows: That there shall be levied, collected, and paid annually upon the gains, profits, and income of every

person residing in the United States, or of any citizen of the United States residing abroad, whether derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States, or elsewhere, or from any other source whatever, a tax of five per centum on the amount so derived over one thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States, by persons residing without the United States, and not citizens thereof. And the tax herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.

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That section one hundred and seventeen be amended by striking out all after the enacting clause and inserting in lieu thereof, the following: That, in estimating the gains, profits, and income of any person, there shall be included all income derived from interest upon notes, bonds, and other securities of the United States ; profits realized within the year from sales of real estate purchased within the year or within two years previous to the year for which income was (is) estimated; interest received or accrued upon old (all) notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, less the interest which has become due from said person during the year; the amount of all premium on gold and coupons; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, not including any part thereof consumed directly by the family; all other gains, profits, and income derived from any source whatever, except the rental value of any homestead used or occupied by any person or by his family in his own right, or in the right of his wife ; and the share of any person of the gains and profits of all companies, whether incorporated or partnership, who would be entitled to the same, if divided, whether divided or otherwise, except the amount of income received from institutions or corporations whose officers, as required by law, withhold a per centum of the dividends made by such institutions, and pay the same to the officer authorized to receive the same; and except that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted. And in addition to one thousand dollars exempt from income tax, as hereinbefore provided, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income, of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; losses actually sustained during the year arising from fires, ship-wreck, or

incurred in trade and debts ascertained to be worthless, but excluding all estimated depreciations of values and losses with-

822 ACT OF IIAECH 2, 1867.

in the year on sales of real estate purchased two years previous to the year for which income is estimated; the amount actually paid for labor or interest by any person who rents lands or hires labor to cultivate land, or who conducts any other business from which income is actually derived; the amounts actually paid by any person for the rent of the house or premises occupied as a residence for himself or his family; the amount paid out for usual or ordinary repairs: Provided, That no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments, made to increase the value of any property or estate: And provided, further. That only one deduction of one thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make such deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interest, only one deduction shall be made in their favor: And provided, further. That in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of one thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid.

That section one hundred and eighteen be amended by striking out all after the enacting clause and inserting, in lieu, thereof, the following: That it shall be the duty of all persons of lawful age to make and render a list or return, on or before the day prescribed by law, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, and administrators, or any person acting in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such person acting in a fiduciary capacity resides, of the amount of income, gains, and

ACT OF MAECII 2, 1867.

profits of any minor or person for whom they act; and the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any such person shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return it shall be the duty of the assessor or assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, or his books or accounts, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of wilful neglect or refusal to make and render a list or return; and, in all cases of a false or fraudulent list or return having been rendered, to add one hundred per centum, as a penalty, to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false and fraudulent return: Provided, That any party, in his or her own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she, or his or her ward or beneficiary, was not possessed of an income of one thousand dollars, liable to be assessed according to the provisions of this act ; or may declare that he or she has been assessed and paid an income tax elsewhere in the same year, under authority of the United States, upon his or her income, gains, and profits, as prescribed by law; and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income tax in the said district; or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deduction claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of

824 ACT OF MAECH 2, 1807.

the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the Commissioner of Internal Revenue: Provided, further. That no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

That section one hundred and nineteen be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That the taxes on incomes herein imposed shall be levied on the first day of March, and be due and payable on or before the thirtieth day of April, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid after the thirtieth of April, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of taxes unpaid and interest at the rate of one per centum per month, upon said tax from the time the same became due, as a penalty, except from the estates of deceased, insane, or insolvent persons : Provided, That the tax on incomes for the year eighteen hundred and sixty-six shall be levied on the day this takes effect.

That section one hundred and twenty-three be amended by striking out all after the enacting clause and inserting, in lieu thereof, the following: That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of one thousand dollars per annum, a tax of five per centum on the excess above the said one thousand dollars; and it shall be the duty of all paymasters and all disbursing officers, under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, 'whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such offi-

ACT OF JULY 14, 1870.

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cers or persons to deduct and withhold the aforesaid tax of five per centum; and the pay-roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same: Provided, That payments of prize money shall be regarded as income from salaries, and the tax thereon shall be adjusted and collected in like manner: Provided, further. That

this section shall not apply to payments made to mechanics or laborers employed upon public works: And provided, further. That in case it should become necessary for showing the true receipts of the government under the operations of this section upon the books of the Treasury Department, the requisite amount may be carried from unappropriated moneys in the treasury to the credit of said account; and this section shall take effect upon salary and compensation for the month of March, eighteen hundred and sixty- seven.

ACT OF JULY 14, 1870.

16 St. at L. 256. 257.

Chap. CCLV. - Aw Act to Keduce Internal Taxes, and foe othee pueposes.

Section 6.

And be it further enacted. That there shall be levied, and collected annually, as hereinafter provided, for the years eighteen hundred and seventy and eighteen hundred and seventy- one, and no longer, a tax of two and one half per centum upon the gains, profits, and income of every person residing in the United States, and of every citizen of the United States resid-

826 ACT OF JULY 14, 1870.

ing abroad, derived from any source whatever, whether within or without the United States, except as hereafter provided, and a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any person residing without the United States, and not a citizen thereof.

Section 7.

And be it further enacted. That in estimating the gains, profits, and income of any person, there shall be included all income derived from any kind of property, rents, interest received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, interest upon notes, bonds, or other securities of the United States ; and the amount of all premium on gold and coupons ; the gains, profits, and income of any business, profession, trade, employment, office, or vocation ; including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress ; except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been with-

held ; the share of any person of the gains and profits, whether divided or not, of all companies or partnerships, but not including the amount received from any corporations whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made, and of interest or coupons paid by such corporations; profits realized within the year from sales of real estate purchased within two years previous to the year for which income is estimated ; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay or grain, fruits, vegetables, or other productions, being the wrowth or produce of the estate of such person, but not including any part thereof consumed directly by the family ; and all other gains, profits, and income drawn from any source what-

ACT OF JULY 14, 1870.

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ftver, but not including the rental value of the homestead used -or occupied by any person, or by his family.

Section 8.

And be it further enacted. That military or naval pensions allowed to any person under the laws of the United States, and the sum of two thousand dollars of the gains, profits, and income of any person, shall be exempt from said income tax, in the manner hereinafter provided. Only one deduction of two thousand dollars shall be made from the aggregate income of all the members of any family composed of one or both parents and one or more minor children, or of husband and wife ; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits ; and guardians and trustees shall be allowed to make the deduction in favor of each ward or beneficiary except that in a case of two or more wards or beneficiaries comprised in one family, having joint property interest, only one deduction shall be made in their favor. For the purpose of allowing said deduction from the income of any religious or social community holding all their property and the income therefrom jointly and in common, each five of the persons composing such society, and any remaining fractional number of such persons less than five, over such groups of five, shall be held to constitute a family, and a deduction of two thousand dollars shall be allowed for each of said families. Any taxes on the incomes, gains, and profits, of such societies, now due and unpaid, shall be assessed and collected according to this provision, except that the deduction shall be only one thousand dollars for any year prior to eighteen hundred and seventy.

Section 9.

And be it further enacted. That in addition to the exemptions provided in the preceding section, there shall be deducted from the gains, profits, and income of any person all national, state, county, and municipal taxes paid by him within the year.

828 ACT OF JULY 14, 1870.

whether such person be owner, tenant, or mortgagor; all his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade, and debts ascertained to be worthless, but excluding all estimated depreciation of values; the amount of interest paid during the year, and the amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived; the amount paid for the rent of the house or premises occupied as a residence for himself or his family, and the amount paid out for usual and ordinary repairs. No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate.

Section 10.

And he it further enacted. That the tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying and collecting said tax, and shall be levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years. And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand thereof by the collector, there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid, and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estates of deceased, insane, or insolvent persons.

Section 11.

And he it further enacted. That it shall be the duty of every person of lawful age, whose gross income during the preceding year exceeded two thousand dollars, to make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides, of the gross amount of his income, gains, and profits as aforesaid ; but not includ-

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ing the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum

of the dividends made and of the interest or coupons paid by such corpora*ion, nor that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress, from which tax has been deducted, nor the wages of minor children not received; and every guardian and trustee, executor or administrator, and any person acting in any of her iiduciary capacity, or as resident agent for, or copartner of, any nonresident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts. The assistant assessor shall require every such return to be verified by the oath of the party rendering it, and may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated. In case any person having a gross income as above, of two thousand dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or assistant assessor shall make such return, according to the best information he can obtain by the examination of said person or of his books or accounts or by any other evidence, and shall add, as a penalty, to the amount of the tax due thereon, fifty per centum in all cases of willful neglect or refusal to make and render a return, and one hundred per centum in all cases of a false or fraudulent return having been rendered. The tax and the addition thereto as penalty shall be assessed and collected in the manner provided for in cases of wilful neglect or refusal to render a return, or of rendering a false or fraudulent return. But no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable notice of the time and place of hearing, to be regulated by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard: Provided, That no col-

830 ACT OF JULY 14, 1870.

lector, deputy collector, assessor, or assistant assessor shall permit to be published in any manner such income returns, or any part thereof, except such general statistics, not specifying the names of individuals or firms, as he may make public, under such rules and regulations as the Commissioner of Internal Revenue shall prescribe.

Section 12.

And he it further enacted. That when the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed ; but such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such cases shall be allowed

until approved by the assistant assessor. Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless: reversed by the Commissioner of Internal Revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the Commissioner of Internal Revenue.

Section 13.

And be it further enacted. That any person in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary, or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or those of his ward, beneficiary, or principal, as required by law; and if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in the said district.

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Section 14.

And he it further enacted. That consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in foreign countries. Provided, That the governments which such consuls may represent shall extend similar exemption to consuls of the United States.

Section 15.

And be it further enacted. That there shall be levied and collected for and during the year eighteen hundred and seventy-one a tax of two and one-half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by any of the corporations in this section hereinafter enumerated, and on the amount of all dividends of earnings, income, or gains, hereafter declared, by any bank, trust company, savings institution, insurance company, railroad company, canal company, turnpike company, canal navigation company, and slack-water company, whenever and wherever the same shall be payable, and to whatsoever person the same may be due, including non-residents, whether citizens or aliens, and on all undivided profits of any such corporation which have accrued and been earned and added to any surplus, contingent, or other fund, and every such corporation having paid the tax as aforesaid, is hereby authorized to deduct and withhold from any payment on account of interest, coupons, and dividends, an amount equal

to the tax of two and one half per centum on the same; and the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an express contract: Provided, That the tax upon the dividends of insurance companies shall not be deemed due until such dividends are pay-

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able, either in money or otherwise; and that the money returned by mutual insurance companies to their policy-holders, and the annual or semi-annual interest allowed or paid to the depositors in savings banks or savings institutions shall not be considered as dividends; and that when any dividend is made, or interest as aforesaid is paid, which includes any part of the surplus or contingent fund of any corporation which has been assessed and the tax paid thereon, or which includes any part of the dividends, interest, or coupons received from other corporations whose officers are authorized by law to withhold a per centum on the same, the amount of tax so paid on that portion of the surplus or contingent fund, and the amount of tax which has been withheld and paid on dividends, interest, or coupons so received, may be deducted from the tax on such dividend or interest.

Section 16.

And he it further enacted. That every person having the care or management of any corporation liable to be taxed under the last preceding section, shall make and render to the assessor or assistant assessor of the district in which such person has his office for conducting the business of such corporation, on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid, a true and complete return, in such form as the Commissioner of Internal Revenue may prescribe of the amount of income and profits and of taxes as aforesaid ; and there shall be annexed thereto, a declaration of the president, cashier, or treasurer of the corporation, under oath, that the same contains a true and complete account of the income and profits and of taxes as aforesaid. And for any default in the making or rendering of such return, with such declaration annexed, the corporation so in default shall forfeit, as a penalty, the sum of one thousand dollars; and in case of any default in the payment of the tax as required, or of any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal.

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Section 17.

And he it further enacted. That sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, and one hundred and twenty-three, of the Act of June thirty, eighteen hundred and sixty-four, entitled "An act to provide internal revenue to support the government, to pay interest on the public debt, and for other purposes," as amended by the Act of July thirteen, eighteen hundred and sixty-six, and the Act of March two, eighteen hundred and sixty-seven, shall be construed to impose the taxes therein mentioned to the first day of August, eighteen hundred and seventy, but after that date no further taxes shall be levied or assessed under said sections ; and all acts and parts of acts relating to the taxes herein repealed, and all the provisions of said acts, shall continue in full force for levying and collecting all taxes properly assessed or liable to be assessed, or accruing under the provision of former acts, or drawbacks, the right to which has already accrued or which may hereafter accrue under said acts, and for maintaining and continuing liens, fines, penalties, and forfeitures incurred under and by virtue thereof. And this act shall not be construed to affect any act done, right accrued, or penalty incurred under former acts, but every such right is hereby saved. And for carrying out and completing all proceedings which have been already commenced or that may be commenced to enforce such fines, penalties, and forfeitures, or criminal proceedings under said acts, and for the punishment of crimes of which any party shall be or has been found guilty.

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28 St. at L. 509; 3 Fed. St. Ann. 622.

Chap. CCCXLIX, An Act to Eeduce Taxation, to Peovide Revenue _foe the Goveenment, and foe Othee pukposes.

Section 27.

That from and after the first day of January, eighteen hundred and ninety-five, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends,

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dred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected, and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends,

or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. And the tax herein provided for shall be assessed, by the Commissioner of Internal Revenue, and collected and paid upon the gains, profits, and income for the year ending the thirty-first of December next preceding the time for levying, collecting, and paying said tax.

Section 28.

That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all Federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated ; interest received or accrued upon all notes, bonds, mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on bonds, notes, or coupons; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, being the growth or produce of the estate

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of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by gift or inheritance; all other gains, profits, and income derived from any source whatever except that portion of the salary, compensation, or pay received for services in the civil, military, naval, or other service of the United States, including Senators, Representatives, and Delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession

shall be deducted, and also all interest due or paid within the year by such person on existing indebtedness. And all national. State, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: Provided, That no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: Provided further. That only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: And provided further. That in cases where the salary or other compensation

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paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars : Provided also. That in computing the income of any person, corporation, company, or association there shall not be included the amount received from any corporation, company, or association, as dividends upon the stock of such corporation, company, or association if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this Act.

Section 29.

That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis hereiu prescribed, to make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy

collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity, shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act, but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy collector, shall require every list or return to be verified by the

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<>aih or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understood; and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a willfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector, to make such list, according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of willful neglect or refusal to make and render a list or return; and in all cases of a willfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of willful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: Provided, That any person or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this Act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied, of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or association shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed;

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but such proof shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation or association feeling aggrieved by the decision of the deputy collector, in such cases may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector such person or corporation, company or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: Provided, That the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition, or affidavit:

Provided, further. That no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a willfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commis-

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sioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

Section 30.

The taxes or incomes herein imposed shall be due and pay-

able on or before the first day of July in each year; and to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per cent per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

Section 31.

Any nonresident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section twenty-nine of this act as if a resident. In computing income he shall include all income from every source, but unless he be a citizen of the United States he shall only pay on that part of the income which is derived from any source in the United States. In case such nonresident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situated in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such nonresident shall be liable to distraint for tax: Provided, That nonresident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the manner as provided for collections of taxes against nonresident persons.

Section 32.

That there shall be assessed, levied, and collected, except as

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herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness, of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships.

That said tax shall be paid on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged

in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

The net profits or income of all corporations, companies, or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.

That nothing herein contained shall apply to states, counties, .

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or municipalities; or to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions, or societies as shall, first, have no stockholders or members except depositors, and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of members who do not participate in the profits thereof and which pay interest or dividends only to their depositors ; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock, that is conducted on the mutual plan solely for the benefit of its depositors on such plan, and which shall keep its account of its business conducted on

such mutual plan separate and apart from its other accounts. Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy-holders or members, and having no capital stock, and no stock or shareholders, and holding all its property in trust and in reserve for its policy-holders or members; nor that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance,

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arid solely for the benefit of the policy-holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy-holders and members insured on said mutual plan.

That all State, county, municipal, and town taxes paid by corporations, companies, or associations shall be included in the operating and business expenses of such corporations, companies, or associations.

Section 33.

That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including Senators and Representatives and Delegates in Congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars ; and it shall be the duty of all paymasters and all disbursing officers under the Government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons paying such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the Treasury Department, when auditing the accounts of the paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employee a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district, and said employee shall pay thereon, subject to the exemptions

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herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars: Provided, That salaries due to State, county, or municipal officers shall be exempt from the income tax herein levied.

Sections 34.

That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows :

Section 3167.

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

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Section 3172.

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

Section 3173.

That it shall be the duty of any person, partnership, firm,

association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income, charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods^ wares and merchandise, articles or objects liable to pay any duty, tax or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or

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affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further^ That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and -the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce

«such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the iState in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such State, he may enter any collection district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

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Section 3176.

When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person, or corporation, company, or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income, or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax ; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

Section 35.

That every corporation, company, or association doing business for profit shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Eevenue may prescribe,

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of all the following matters for the whole calendar year last preceding the date of such return:

First. The gross profits of such corporation, company, or association, from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed, and the name and address of each of such persons and the amount paid to each.

Section 36.

That it shall be the duty of every Corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds on which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief, he shall issue a request in writing to such corporation, company, or association to permit an inspection of the books of such corporation, company, or association to be made ; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the

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amount of such income and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income.

Section 37.

That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this Act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and when ever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

JOINT RESOLUTION OF FEBRUARY 19, 1895.

28 St. at L. 971.

Joint Resolution Extending Time to File Returns.

Resolved, That the time fixed by existing law for the rendering of income returns, to wit: On or before the first Monday of March in every year (Section 35, Act of August 28, 1894, and Section 3173, Revised Statutes, as amended by Section

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34 of that Act) is hereby extended with reference only to returns of income for the year 1894, so that it shall be lawful to make such returns for that year on or before April 15, 1895.

Resolved, That in computing incomes under said act, the amounts necessarily paid for fire insurance premiums and for ordinary repairs shall be deducted.

Resolved, That in computing incomes under said act, the amounts received as dividends upon the stock of any corpo-

ration, company, or association shall not be included in case such dividends are also liable to the tax of 2 per cent, upon the net profits of said corporation, company, or association, although such tax may not have been actually paid by said corporation, company, or association at the time of making returns by the person, corporation, or association receiving such dividends, and returns or reports of the names and salaries of employees shall not be required from employers unless called for by collector in order to verify the returns of employees.

ACT OF AUGUST 5, 1909.

'An Act to Provide Revenue, Equalize Duties, and en-

COUEAGE THE INDUSTRIES OF THE UNITED STATES AND
FOR OTHER PURPOSES," APPROVED AUGUST 5, 1909, 36

St. at L. c. 6, p. 112, Comp. St. 1910, Supp. 1911, p.
946, FEDERAL CODE, Supp. § 1036.

Section 38.

First. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with Foster Income Tax. - 54.

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respe(3t to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, however. That nothing in this section contained shall apply to labor, agricultural or horticultural

organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable^ or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual. Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of . its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies

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the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits ; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, That in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained

within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds ; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such

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bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form

as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year

in business conducted by it within the United States or its Territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or associa-

tion, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company is incorrect, or whenever any collector shall

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report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient ; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons ; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Up-

on the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary.

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not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

Seventh. It shall be unlawful for any collector, deputy col-

ector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section ex-

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cept upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

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Title XXV. — Internal Revenue. — Chapter II. of Assessments AND Collections.

U. S. E. S., § 3167, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6338; and October 3, 1913.

Section 3172, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6339 ; and October 3, 1913.

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

Section 3173, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6340 ; and October 3, 1913.

That it shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold, and charged with a tax, the several rates and aggregate amount according to the forms and regulations to be prescribed

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by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being dis-

tinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided, further. That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post-office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law, within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person on being notified or required as aforesaid shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any

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other person lie may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection-district where such person may be found, and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Section 3174.

Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Section 3175.

Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testimony, or to answer interrogatories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon

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his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons, and to punish such person for his default or disobedience.

Section 3176, as amended Aug. 27, 1894, 28 St. at L. 509, 2 Fed. St. Ann. 143, Comp. St. 2375, Pierce Fed. Code, § 6341.

When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company, or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income, or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence, as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the

neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

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Section 3177.

Any collector, deputy collector, or inspector may enter, in the day-time, any building or place where any articles or objects subject to tax are made, produced, or kept, within his district, so far as it may be necessary, for the purpose of examining said articles or objects. And any owner of such building or place, or person having the agency or superintendence of the same, who refuses to admit such officer, or to suffer him to examine such article or articles, shall, for every such refusal, forfeit five hundred dollars. And when such premises are open at night, such officers may enter them while so open, in the performance of their official duties. And if any person shall forcibly obstruct or hinder any collector, deputy collector, or inspector, in the execution of any power and authority vested in him by law, or shall forcibly rescue or cause to be rescued any property, articles, or objects after the same shall have been seized by him, or shall attempt, or endeavor so to do, the person so offending, excepting in cases otherwise provided for, shall, for every such offense, forfeit and pay the sum of five hundred dollars, or double the value of the property so rescued, or be imprisoned for a term not exceeding two years, at the discretion of the court.

Section 3178.

All persons required to make returns or lists of objects charged with an internal tax shall declare therein whether the several rates and amounts are stated according to their values in legal tender currency or according to their values in coined money; and in case of neglect or refusal so to declare to the satisfaction of the collector receiving such returns or lists, such officer shall make returns or lists for such persons so neglecting or refusing as in cases of persons neglecting or refusing to make the returns or lists required by law, and the Commissioner shall assess the tax thereon, and add thereto the amount of penalties imposed by law in cases of such neglect or refusal. And whenever the rates and amounts contained in the returns or lists are stated in coined money, tilit?

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collector receiving the same shall reduce them to their equivalent in legal-tender currency, according to the value of such coined money in said currency for the time covered by such

returns.

Section 3179.

Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Section 3180.

When ever there are in any district any articles not owned or possessed by or under the care or control of any person within such district, and liable to be taxed, and of which no list has been transmitted to the collector, as required by law, the collector or one of his deputies shall enter the premises where such articles are situated and shall take such view thereof as may be necessary, and make lists of the same, according to the form prescribed. Said lists, being subscribed by such collector or deputy, shall be taken as sufficient lists of such articles for all purposes.

Section 3181.

The lists or returns aforesaid shall, where not otherwise specially provided for, be taken with reference to the day fixed for that purpose by this Title as aforesaid; and where duties accrue at other and different times, the list shall be taken with reference to the time when said taxes become due, and shall be denominated annual, monthly, and special lists or returns.

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Section 3182.

The Commissioner of Internal Revenue is hereby authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this Title, or accruing under any former internal-revenue act, where such taxes have not been duly paid by stamp at the time and in the manner provided by law, and shall certify a list of such assessments when made to the proper collectors respectively, who shall proceed to collect and account for the taxes and penalties so certified. Whenever it is ascertained that any list which has been or shall be delivered to any collector is imperfect or incomplete in consequence of the omission of the name of any person liable to tax or in consequence of any omission, or understatement, or undervaluation, or false or fraudulent statement contained in any return made by any person liable

to tax, the Commissioner of Internal Revenue may, at any time within fifteen months from the time of the delivery of the list to the collector as aforesaid, enter on any monthly or special list the name of such persons so omitted, together with the amount of tax for which he may have been or shall become liable, and also the name of any such person in respect to whose return, as aforesaid, there has been or shall be any omission, undervaluation, understatement, or false or fraudulent statement, together with the amount for which such person may be liable, above the amount for which he may have been or shall be assessed upon any return made as aforesaid; and he shall certify and return such list to the collector as required by law. And all provisions of law for the ascertainment of liability to any tax, or the assessment or collection thereof, shall be held to apply, so far as may be necessary, to the proceedings herein authorized and directed.

Section 3183.

It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give

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receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered ; but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Section 3184.

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

Section 3185.

All returns required to be made monthly by any person

liable to tax shall be made on or before the tenth day of each month, and the tax assessed or due thereon shall be returned by the Commissioner of Internal Revenue to the collector on or before the last day of each month. All returns for which no provision is otherwise made shall be made on or before the tenth day of the month succeeding the time when the tax is due and liable to be assessed, and the tax thereon shall be returned as herein provided for monthly returns, and shall be due and payable on or before the last day of the month in which the assessment is so made. When the said tax is not paid on or before the last day of the month, as aforesaid, the collector shall add a penalty of five per centum, together with interest at the rate of one per centum per month, upon such tax from the time the same became due\$ but no interest for a fraction of a month shall be demanded : Provided, That notice

of the time when such tax becomes due and payable is given
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in such manner as may be prescribed by the Commissioner of Internal Revenue. It shall then be the duty of the collector, in case of the non-payment of said tax on or before the last day of the month as aforesaid, to demand payment thereof, with five per centum added thereto, and interest at the rate of one per centum per month, as aforesaid, in the manner prescribed by law; and if said tax, penalty, and interest are not paid within ten days after such demand, it shall be lawful for the collector or his deputy to make distraint therefor, as provided by law.

Section 3186.

As amended by Act of March 4, 1913.

38 St. at L. 1016.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person.

Provided, however that such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: Provided further, whenever any State by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that State, or in the State of Louisiana in the parishes thereof, then such lien shall not be valid in that

State as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the State of Louisiana, within which the property subject to the lien is situated.

Section 3187.

If any person liable to pay any taxes refuses or neglects

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to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforejsaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid : Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed fifty dollars ; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days ; fuel to an amount not greater in value than twenty-five dollars ; provisions to an amount not greater than fifty dollars; household furniture kept for use to a amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

.Section 3188.

In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector, to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payments of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be suflSeient for the fees, costs, and expenses of such levy.

Section 3189.

All persons, and officers of companies or corporations, are

required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of

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property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid.

Section 3190.

When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten or more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Section 3191.

When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof

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in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

Section 3192.

When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

Section 3193.

In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale, payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges ; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Section 3194.

In all cases of sale, as aforesaid, the certificate of such sale shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the pur-

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chaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books, and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Section 3195.

When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all cost, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same ; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof, shall by warrant on the Treasury, cause the same to be paid to the applicant.

Section 3196.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person or not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Section 3197.

The officer making the seizure mentioned in the preceding

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section shall give notice to the person whose estate it is proposed to sell by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice.

The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue.

At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars.

When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees aforesaid to such several tracts or parcels, or to any of them, in estimating the minimum price aforesaid.

If no person offers for sale estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States; otherwise the same shall be declared to be sold to the highest bidder.

And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and, at the proper time, as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and

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shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue.

And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell said estate in the same manner.

And it is hereby provided. That all certificates of purchase, and deeds of property purchased by the United States under the internal-revenue laws, on sales for taxes, or under executions issued from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue.

And it is hereby further provided. That for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

Section 3198.

Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase-money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the state in which such real estate is situate upon the subject of sales of real estate under execution.

Section 3199.

The deed of sale given in pursuance of the preceding section

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shall be prima facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto.

SECTION 3200.

Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the state in which such officer resides ; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection district.

Section 3201.

Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Section 3202.

The owners of any real estate sold as aforesaid, their heirs,

executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs, or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

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Section 3203.

It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making said sale, amount of fees and expenses, the name of the purchaser, and the date of the deed ; and said record shall be certified by the officer making the sale.

And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue.

And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof.

In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office;

And a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Section 3204.

When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption.

Section 3205.

Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the per-

son against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

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Section 3206.

The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures ; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

Section 3207.

In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the real estate sought to be subjected as aforesaid shall be made parties to such proceedings, and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein, and finally determine the merits of all claims to and liens upon the real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States.

Section 3208.

The Commissioner of Internal Revenue shall have charge of all real estate which is now or shall become the property of the United States by judgment of forfeiture under the internal revenue laws, or which has been or shall be assigned, set off, or conveyed by purchase or otherwise to the United States in

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payment of debts or penalties arising under the laws relating to internal revenue, or which has been or shall be vested in the United States by mortgage or other security for the payment of such debts and of all trusts created for the use of the United States in payment of such debts due them ;

And, with the approval of the Secretary of the Treasury, may, at public vendue, and upon not less than twenty days' notice, sell and dispose of all real estate owned or held by the United States aforesaid.

And until such sale the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may lease such real estate owned as aforesaid on such terms and for such period as they shall deem expedient.

And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date, of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed, or otherwise convey such real estate to the debtor from whom it was taken, or to his heirs or other legal representatives.

Section 3209.

Whenever a collector has on any list returned to him the name of any person not within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect

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the said tax in the same way as if the name of the person and object of tax contained in the said certified statement were on any list of his own collection-district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

Section 3210.

The gross amount of all taxes and revenues received or collected by virtue of this Title, or of any law hereafter enacted providing internal revenue, shall be paid, by the officers receiving or collecting the same, daily into the Treasury of the United States, under the instructions of the Secretary of the Treasury, without any abatement or deduction on account of salary, compensation, fees, costs, charges, expenses, or claims of any

•description ; and a certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the treasurer, assistant-treasurer, designated depository, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue: Provided, That in districts where, from the distance of the officer, collector, or agent receiving or collecting such taxes and revenues from a proper government depository, the Secretary of the Treasury may deem it proper, he may extend the time for making such payment, not exceeding, however, in any case a period of one month.

Section 3211.

The Secretary of the Treasury is authorized to designate one or more depositories in each state, for the deposit and safe-keeping of the money collected by virtue of the internal revenue laws ; and the receipt of the proper officer of such depository to a collector for the money deposited by him shall be a sufficient voucher for such collector in the settlement of his accounts at the Treasury Department.

Section 3212.

Every collector shall, at the expiration of each month after

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he commences his collections, transmit to the Commissioner of Internal Revenue a statement of the collections made by him within the month. And every collector shall complete the collection of all sums assigned to him for collection, and shall pay over the same into the Treasury, and shall render his accounts to the Treasury Department as often as he may be required.

Section 3213.

It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tarn or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

Section 3214.

1^0 suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: Provided, That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Section 3215.

It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to

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establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws.

Section 3216.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties shall be paid to collectors as internal taxes are required to be paid.

Section 3217.

When any collector fails either to collect or to render his account, or to pay over in the manner or within the times provided by law, the First Comptroller of the Treasury shall, immediately after evidence of such delinquency, report the same to the Solicitor of the Treasury, who shall issue a warrant of distress against such delinquent collector, directed to the marshal of the district, expressing therein the amount with which the said collector is chargeable, and the sums, if any, which have been paid over by him, so far as the same are ascertainable. And the said marshal shall, himself, or by his deputy, immediately proceed to levy and collect the sums which may remain due, with five per centum thereon, and all the expenses and charges of collection, by distress and sale of the goods and chattels, or any personal effects of the delinquent collector, giving at least five days' notice of the time and place of sale, in the manner provided by law for advertising sales of personal

property on execution in the state wherein such collector resides. And the bill of sale of the officer of any goods, chattels, or other personal property, distrained and sold as aforesaid, shall be conclusive evidence of title to the purchaser, and prima facie evidence of the right of the officer to make such sale, and of the correctness of his proceedings in selling the same. And for want of goods and chattels, or other personal effects of such

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collector, sufficient to satisfy any warrant of distress, issued as aforesaid, the real estate of such collector, or so much thereof as may be necessary for satisfying the said warrant, after being advertised for at least three weeks next before the time of sale, in not less than three public places in the collection-district and in one newspaper printed in the county or district, if any there be, shall be sold at public auction by the marshal or his deputy. Upon such sale, the marshal shall make and deliver to the purchaser of the premises sold a deed of conveyance thereof, to be executed and acknowledged in the manner and form prescribed by the laws of the state in which said lands are situated, and said deed so made shall invest the purchaser with all the title and interest of the defendant named in said warrant, existing at the time of the seizure thereof. And all moneys that may remain of the proceeds of such sale of personal or real property, after satisfying the said warrant of distress, and paying the reasonable costs and charges of sale, shall be returned to the proprietor of the property sold as aforesaid.

Section 3218.

Every collector shall be charged with the whole amount of taxes whether contained in lists transmitted to him by the Commissioner of Internal Revenue, or by other collectors, or delivered to him by his predecessor in office, and with the additions thereto, with the par value of all stamps deposited with him, and with all moneys collected for penalties, forfeitures, fees, or costs; and he shall be credited with all payments into the Treasury made as provided by law, with all stamps returned by him uncanceled to the Treasury, and with the amount of taxes contained in the lists transmitted in the manner heretofore provided to other collectors, and by them receipted as aforesaid; also with the amount of taxes of such persons as may have absconded, or become insolvent, prior to the day when the tax ought, according to the provisions of law, to have been collected, and with all uncollected taxes transferred by him or by his deputy acting as collector to his successor in office : Provided, That it shall be proved to the satisfaction of the

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Commissioner of Internal Revenue, who shall certify the facts to the First Comptroller of the Treasury, that due diligence was used by the collector. And each collector shall also be credited with the amount of all property purchased by him for the use of the United States, provided he faithfully account for and pay over the proceeds thereof upon a resale of the same as required by law.

Section 3219.

In the case of the death, resignation, or removal of any collector, all lists and accounts of taxes uncollected shall be transferred to his successor in office as soon as such successor is appointed and qualified, and it shall be the duty of such successor to collect the same.

Section 3220.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him, in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty : Provided, That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not Foster Income Tax. - 56.

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false or fraudulent, and did not contain any understatement or undervaluation.

Section 3221,

The Secretary of the Treasury, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or neg-

ligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any distillery warehouse, or bonded warehouse of the United States, and before the tax thereon has been paid, may abate the amount of internal taxes accruing thereon, and may cancel any warehouse bond, or enter satisfaction thereon, in whole or in part, as the case may be. And if such taxes have been collected since the destruction of said spirits, the said Secretary shall refund the same to the owners thereof out of any moneys in the Treasury not otherwise appropriated. And when any distilled spirits are hereafter destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the same should have been drawn off by the ganger and placed in the distillery-warehouse provided by law, no tax shall be collected on such spirits so destroyed, or if collected, it shall be refunded upon the production of satisfactory proof that the spirits were destroyed as herein specified.

Section 3222.

The preceding section shall take effect in all cases of loss or destruction of distilled spirits as aforesaid which have occurred since January one, eighteen hundred and sixty-eight.

Section 3223.

When the owners of distilled spirits in the cases provided for by the two preceding sections may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits before and without the

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tax being paid, the tax shall not be remitted to the extent of such insurance.

Section 3224.

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

Section 3225.

When the second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation.

Section 3226.

ITo suit shall be maintained in any court for the recovery of an internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of (the) Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: Provided, That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

Section 3227,

'No suit or proceeding for the recovery of any internal tax

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alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: Provided, That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

Section 3228.

All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: Provided, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right or action which was already barred by any statute on that date.

Section 3229.

The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws

instead of commencing suit thereon ; and, with the advice and consent of the said Secretary, and the recommendation of the Attorney-General, he may compromise any case after suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of

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the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, -with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

Section 3230.

iSto discontinuance or nolle prosequi of any prosecution under section three thousand two hundred and fifty-seven shall be allowed without the permission in writing of the Secretary of the Treasury and the Attorney-General.

Section 3231.

It^hall be lawful for any court in which any suit or criminal proceeding arises under the internal revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion by the district attorney.

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StrPPLEMENTAL SECTIONS EeLATING TO InTEENAL EeVBNUe.

Section 3140.

The word "State," used in this Title, shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out its provisions. And where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the word "person," as used in this Title, shall be construed to mean and include a partnership, association, company, or corporation, as well as a natural person.

Section 3162.

Every collector of internal revenue and every superintendent

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of experts and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

Section 3165.

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

Section 3166.

Any officer of internal revenue may be specially authorized by the Commissioner of Internal Revenue to seize any property which may by law be subject to seizure, and for that purpose such officer shall have all the power conferred by law upon collectors; and such special authority shall be limited in respect of time, place, and kind and class of property, as the Commissioner may specify: Provided, That no collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector.

Section 3169.

Every officer or agent appointed and acting under the authority of any revenue law of the United States -

First. Who is guilty of any extortion or willful oppression tending to color of law ; or,

Second. Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or.

Third. Who willfully neglects to perform any of the duties enjoined on him by law; or,

Fourth. Who conspires or colludes with any other person to defraud the United States; or,

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Fifth. Who makes opportunity for any person to defraud the United States; or,

Sixth. Who does or omits to do any act with intent to enable any other person to defraud the United States ; or,

Seventh. Who negligently or designedly permits any viola-

tion of the law by any other person ; or,

Eighth. Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or,

Ninth. Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner of Internal Revenue; or,

Tenth. Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement, of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do, shall be dismissed from office, and shall be held to be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One-half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court.

Section 3171.

If any officer appointed under and by virtue of any act to provide internal revenue, or any person acting under or by authority of any such officer, shall receive any injury to his person or property, for or on account of any act by him done, under any law of the United States for the collection of taxes,

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he shall be entitled to maintain suit for damages therefor, in the circuit court of the United States, in the district wherein the party doing the injury may reside or shall be found.

Section 3447.

Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

Section 3462.

The several judges of the circuit and district courts of the United States, and commissioners of the circuit courts, may, within their respective jurisdictions, issue a search-warrant, authorizing any internal revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

PART V

STATE AND TERRITORIAL INCOME
TAX LAWS.

HAWAII

SESSION OF 1901, Law of April 30, 1901.

ACT 20

An Act to Provide a Tax on Incomes.

Be it enacted by the Legislature of the Territory of Hawaii:
Sec. 1. From and after the first day of July, a. d. 1901, there shall be levied, assessed, collected and paid annually upon the gains, profits and income, over and above one thousand dollars, derived by every person residing in the Territory of Hawaii from all property owned, and every business, trade, profession, employment or vocation carried on in the Territory, and by every person residing without the Territory from all property owned, and every business, trade, profession, employment or vocation carried on in the Territory, and by every servant, or officer, of the Territory wherever residing, a tax of Two Per Cent on the amount so derived during the year preceding.

Sec. 2. There shall be levied, assessed, collected and paid annually, except as hereinafter provided, a tax of Two Per Cent on the net profit or income above actually operating and business expenses, from all property owned, and every business, trade, employment or vocation carried on in the Territory of Hawaii, of all corporations doing business for profit in the Territory, no matter where created and organized; provided, however, that nothing herein contained shall apply to corporations, companies or associations conducted solely for charitable, religious, educational or scientific purposes, including fraternal beneficiary societies not to insurance companies taxed on a percentage of the premiums under the authority of another Act

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890 HAWAII LAW OF APRIL 30, 1901.

Sec. 3. In estimating the gains, profits and income of any person or corporation, there shall be included all income derived from interest upon notes, bonds and other securities, except such bonds of the Territory of Hawaii or of municipalities hereafter created by the Territory the principal and interest of which are by the law of their issuance exempt from all taxation; profits realized within the year preceding from sales of real estate, including leaseholds purchased within two years; dividends upon the stock of any corporation; the amount of all premiums on bonds, notes or coupons; the amount of sales of all movable property, less the amount expended in the purchase or production of the same, and in the case of a person not including any part thereof consumed directly by him or his family; money and the value of all personal property acquired by gift or inheritance, and all other gains, profits and income derived from any source whatsoever.

Sec. 4. The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders from any fund or account, or carried to the account of any fund or used for construction, enlargements of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation.

In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession or occupation, or in managing any property, shall be deducted, and also all interest paid by such person or corporation on existing indebtedness. And all government taxes and license fees paid within the year shall be deducted from the gains, profits or income of the person who or the corporation which has actually paid the same, whether such person or corporation be owner, tenant or mortgagor; also all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred.

Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments made to increase the value of any property or estate.

Provided further, that no deduction shall be made for personal or family expenses, the exemption of one thousand dollars mentioned in Section 1 being in lieu of same.

HAWAII LAW OF APRIL 30, 1901.

Provided further, that where allowable herein only one de-

duction of one thousand dollars shall be made from the aggregate annual income of all the members of one family composed of one or both parents and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family, in which case the aggregate deduction in their favor shall not exceed one thousand dollars.

Provided further, that in assessing the income of any person or corporation there shall not be included the amount received from any corporation as dividends upon the stock of such corporation if the tax of two per cent, has been assessed upon its net profits by said corporation as required by this Act, nor any bequest or inheritance otherwise taxed as such.

Sec. 5. Every corporation doing business for profit in the Territory shall make and render to the Assessor of its Tax Division, between the first and thirty-first days of July of each year, beginning with the year 1901, a full return verified by oath or affirmation of its duly empowered officer, in such form as the Treasurer of the Territory may prescribe, of all the following matters for the whole twelve months ending June 30th last preceding the date of such return :

First; The gross receipts of such corporation from sales made at home or abroad, and from all kinds of business of any name or nature;

Second: The expenses of such corporation, exclusive of interest, annuities and dividends :

Third: The amount paid on account of interest, annuities and dividends stated separately.

Fourth: The amount expended on permanent improvements;

Fifth : The amount paid in salaries or compensation of more than six hundred dollars to each person employed, and the name and amount paid to each.

Sec. 6. It shall be the duty of all persons of lawful age having an income of six hundred dollars or more for the preceding year from all sources and of all corporations made liable to income tax to make and render a list or return, between the first and thirty-first days of July of each year, in such form

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as the Treasury of the Territory may direct, to the Assessor of the Division in which such persons or corporations reside, locate or do business of the amount of their or its income, gains and profits as aforesaid ; and all guardians, trustees, executors, administrators, agents, receivers, and all corporations or persons

acting in a fiduciary capacity, shall make or render a list or return as aforesaid to the Assessor of the Division in which such person or corporation acting in a fiduciary capacity resides or does business of the amount of income, gains and profits of any minor or person for whom they act, and the Assessor shall require every list or return to be verified by the oath or affirmation of the person or authorized officer of the corporation making the same.

If any person or corporation refuse or neglect to render such return within the time required as aforesaid, or renders a return which in the opinion of the 'Assessor is false and fraudulent, or contains any understatement, it shall be lawful, for the Assessor to summon such person, or any of the officers of such corporation or person having possession, custody or care of books of accounts containing entries relating to the business of such person or corporation, or any other person he may deem proper, wherever residing or found, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogations under oath respecting any income liable to tax or the returns thereof. False, wilful testimony given before such Assessor shall be deemed perjury and punishable as such.

Sec. 7. It shall be the duty of every person or corporation doing business for profit to keep full, regular and accurate books of accounts upon which all its transactions shall be entered from day to day in regular order, which books shall be open to the inspection of the Assessor of the Division or any person authorized by him to inspect the same, during business hours.

Sec. 8. When any person or corporation having a taxable income refuses or neglects to render any return or list required by law or declines to take oath or affirmation thereto the Assessor may make such assessments as he may consider just and the same shall be binding and conclusive upon all parties and shall not be subject to appeal. In case of any false or fraudulent return or valuation by any tax payer the Assessor shall add

HAWAII LAW OF APRIL 30, 1901. 893

200 per cent, to a just valuation of the income of such tax payer and the amount of the tax assessed on such increase shall become part of the said income.

Sec. 9. Any person or corporation who or which has made a legal return as aforesaid may appeal from the amount assessed to the Tax Appeal Court constituted under Act 51 of the Session Laws of 1896, in like manner as allowed in case of property tax appeals and the said Court is hereby authorized to hear and determine such appeals subject to the revision of the Supreme Court as provided in the case of property taxes. Where the words 'valuation of property' or similar words occur in said Act concerning such appeals the words 'amount of taxable income' shall be understood in all proceedings in regard

to appeals from assessment or judgments in income tax matters. Any person or corporation appealing from the assessment of the Assessor shall lodge with the Assessor on or before the first day of October of each year a notice in writing of his intention to appeal and the grounds of such appeal, and deposit with him the costs of appeal as prescribed in case of property taxes which cost shall be subject to the regulations prescribed in said Act. The said Tax Appeal Court shall sit for hearing of tax appeals under the authority of this Act between the fifth and twenty-fifth days of October of each year.

The taxes on income imposed shall be due and payable on or before the fifteenth day of November of each year; and any sum or sums annually due and unpaid after the said fifteenth day of November shall have added thereto ten per cent, on the tax which shall be and become a part of such tax. Interest at the rate of nine per cent, per annum shall be added to the amount of such tax and penalty from the time same shall become due.

All the powers, authorities and rights of compensation by Chapter 51 of the Session Laws of 1896 conferred on the Tax Appeal Court constituted under the authority of the said Chapter for hearing and determining appeals duly taken thereunder are conferred on said Court for hearing and determining appeals under this Act, and all the powers, authorities and duties contained in or enacted by said Chapter for levying, assessing,

894 MASS. REVISED STATUTES, CH. II, § 4.

collecting, receiving and enforcing payments of the tax imposed under the authority of said Chapter and otherwise relating thereto shall be severally and respectively conferred, practiced and exercised for levying, assessing, collecting and receiving and enforcing payment of the tax imposed under the authority of this Act, as far as the same shall not be superseded by, and shall be consistent with the express provisions of this Act, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated and re-enacted in the body of this Act with reference to said tax, and all and every the regulations of the said Chapter, except as aforesaid, shall be applied, construed, deemed and taken to refer to the tax imposed under the authority of this Act, in like manner as if the same had been enacted herein. The assessments made under the authority of this Act and the Assessment Books and Delinquent Tax Lists made in accordance with the provisions of said Chapter 51 of the Session Laws of 1896 shall be prima facie evidence of the correctness of the tax imposed under this Act in any case.

Sec. 11. The Treasurer of the Territory shall furnish the several Assessors all necessary books, blanks, and stationery to carry out the provisions of this Act.

Sec. 12. Act 65 of the Session Laws of 1896 is hereby repealed.

Sec. 13. This Act shall take effect on the first day of July, .
A. D. 1901.

Approved this 30th day of April, A. D. 1901.

SANFORD B. DOLE,

Governor of the Territory of Hawaii.

MASSACHUSETTS INCOME TAX LAW.

[Mass. E. S. Ch. IL sec. 4.]

Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are, ships and vessels at home or abroad, except as provided in section eight * * * and so much of the income from a profession, trade.

WOETH CAEOLINA ACT OF 1907, CLI. 256. 895

or employment as exceeds the sum of two thousand dollars a year, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed, but no income shall be taxed which is derived from property subject to taxation.

NOKTH CAEOLINA INCOME TAX LAW.

[Bell's Revisal of 1908, p. 5124.]

[N. O. Laws 1907, ch. 256, §§ 22-25.]

IV. INCOMES.

Sec. 5127. Rate of ; none levied by municipalities. On all gross incomes as provided in this subchapter, a tax shall be levied as follows : On the excess over the amount legally exempted, one per cent. The above tax shall not be levied upon the income derived from property already taxed, or upon income less than one thousand dollars. The incomes subject to the above tax are those derived from property not taxed ; from salaries, fees and commissions, public or private ; from annuities, from trades or professions, and from any other sources the incomes from which are not specifically exempted from taxation by law. No city, town, township or county shall levy any inheritance or income tax. (1907, chap. 256, §§ 24, 25.)

Sec. 5128. In excess of one thousand dollars listed. Every taxpayer shall list his income for the year ending June first from any and all sources in excess of one thousand dollars. (1907, chap. 256, § 22.)

Sec. 5129. How and when taxpayer lists. The blank for listing taxes shall contain the following question: "Was your gross income from salaries, fees, trade, profession and property not taxed, any or all of them, for the year ending June first, in excess of one thousand dollars ?"

If the tax-payer answers this question in the affirmative, he shall be furnished by the list-taker with a blank in the following form, to wit:

To the Corporation Commission of the State of North Carolina:

I hereby certify that my income from salaries, fees, trade, profession and property not taxed, any or all of them, for the

896 NOETH CAROLINA ACT OF 1907, CH. 256.

year ending June first, in excess of one thousand dollars, was

, being duly sworn, says that the

foregoing certificate is true to the best of his knowledge and belief.

Subscribed and sworn to before me this day of

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Said taxpayer shall fill out, sign and swear to said certificate before the list-taker or other officer authorized by law to administer oaths, and the list-taker shall forward the same to the Corporation Commission of the state not later than July first of that year, and said Corporation Commission shall certify the amount of the tax due upon the income so reported to the chairman of the board of county commissioners of the county in which said tax-payer resides, and the same shall be paid to the sheriff of said county, together with the other taxes for that year. (1907, chap. 256, § 23.)

Sec. 5130. Duty of list-taker as to. At the time such taxpayer states to the list-taker that he is liable for a tax upon his income, said list-taker shall note the same on a list to be kept by him for that purpose and on or before July fifth next he shall return such list to the chairman of the board of commissioners of that county, and said chairman shall within five days thereafter furnish to said corporation commission a copy of such list and the names of any other persons in his county not appearing thereon, who in his opinion may be liable for an income tax hereunder, and said Corporation Commission may take such

steps as he may deem necessary to require any such person whose name is so added to make proper returns of his said income. (1907, chap. 256, § 23.)

Sec. 5131. Publishing income tax returns. If any person shall print or publish in any manner whatever any income tax return or any part thereof, or the amount or source of income appearing in any such return, or the taxes due thereunder, he shall be guilty of a misdemeanor and be punished by a fine not exceeding fifty dollars or be imprisoned not more than thirty days for each offense. (1907, chap. 256, § 23.)

OKLAHOMA LAWS 1907, P. 730.

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OKLAHOMA INCOME TAX LAW.

[Oklahoma Laws 1907, p. 730. E. L. A. D. 1910, §§ 7529-

7537.J

Sec. 1. At the time of making the assessment of real and personal property for taxation in this state, the assessor shall demand of each person a list of his income for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars. The blank for listing taxes shall contain the question: "Was your gross income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars?"

Sec. 2. If the person answers the question in the affirmative, he shall be furnished by the assessor with a blank in the following form, to wit :

"To the Auditor of the State of Oklahoma: I hereby certify that my income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth, in excess of three thousand five hundred dollars was \$

"I, being duly sworn, do certify that the foregoing certificate is true to the best of my knowledge and belief.

<i

"Subscribed and sworn to before me this day of

It

"Assessor."

Said person shall fill out, sign, and swear to said certificate before the assessor or other officer authorized by law to administer oaths, and such assessor shall forward the same to the state auditor not later than July first of that year, and said state auditor shall certify the amount of the tax due upon the income so reported to the county clerk of the county in which said person resides, who shall extend the same on the tax rolls and shall at the same time and in the same manner as is now, or may hereafter be, provided by law relative to the tax lists of the real and personal property, deliver the same to the county

treasurer.

Foster Income Tax. - 57.

898 OHLAHOMA LAWS 1907, P. 730.

Sec. 3. It shall be the duty of the assessor of each township to furnish the state auditor a list of all persons whom he may find who are subject to the above tax and who have filled out the list alone required, together with the names of other persons in his township not appearing thereon, who, in his opinion, may be liable for an income tax hereunder, and said state auditor may take such steps as he may deem necessary to require any such person whose name is added to make proper return of his income, and to enable him to obtain such information he or anyone designated by him to obtain such information shall have the power to summon witnesses within the county in which such persons live: Provided, however, if any witness so subpoenaed fails and refuses to appear and give information as provided by this section, the state auditor shall certify such fact to any court and said court shall thereupon issue a subpoena requiring the person subpoenaed to appear and give testimony as required by this section, and if any such person subpoenaed shall fail or refuse to obey said subpoena, such person shall be punished as provided by law in cases of contempt.

Sec. 4. There is hereby levied, for the benefit of the available common school fund of the state, a tax of five mills on the dollar on the excess over the amount of three thousand five hundred dollars and less than five thousand, and seven and one-half mills on the dollar on the excess of five thousand dollars and less than ten thousand dollars, and twelve mills on the dollar on the excess over the amount of ten thousand dollars and less than twenty thousand dollars, and fifteen mills on the dollar on the excess over the amount of twenty thousand dollars and less than fifty thousand dollars, and twenty mills on the dollar on the excess over the amount of fifty thousand dollars and less than one hundred thousand dollars, and thirty-three and one-third mills on the dollar upon all amounts over one hundred thousand dollars of all gross incomes.

Sec. 5. The above tax shall not be levied upon the income derived from property upon which a gross receipt or excise tax has been paid.

Sec. 6. It shall be unlawful for any person to print or publish in any manner whatever any income tax return or any part thereof, or the taxes due thereon unless the tax herein becomes

SOUTH CAEOLINA LAWS 1912, §§ 354-360. 899

delinquent, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not to exceed fifty dollars and imprisoned in the county jail not more than thirty days for each offense.

Sec. 7. If any of the taxes herein levied become delinquent they shall become a lien on all the property, personal and real of such delinquent person and shall be subject to the same penalties and provisions as are all ad valorem taxes.

Sec. 8. Any person making the affidavits required herein, who shall knowingly swear falsely shall be guilty of perjury.

Sec. 9. Any assessor who shall fail or refuse to perform the duties herein imposed shall be guilty of malfeasance in office and shall forfeit the amount of taxes lost by the state by such failure or refusal to be collected in a civil action in the name of the state against the assessor.

Sec. 10. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 11. An emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved May 26, 1908.

SOUTH CAROLINA INCOME TAX LAW.

[Code of Laws of South Carolina, 1912, Vol. I, p. 130 (Civil Code)]

Sec. 354. Graduated Tax on Income — There shall be annually assessed, levied and collected upon the gains, gross profits and income received during the preceding calendar year by every citizen of this state, whether such gains, profits or income be derived from any kind of property, rents, interest, dividend, or salaries, or from any profession, trade, employment or vocation carried on in this state or from any other source whatever, a tax of one per centum on the amount so derived over and above \$2,500 and up to \$5,000 ; one and one-

half per centum on \$5,000 and over, up to \$7,500 ; two per centum on \$7,500 and over, up to \$10,000 ; two and one-half per centum on \$10,000 and over, up to \$15,000 ; three per centum on \$15,000 and over; and a like tax shall be assessed, levied, and collected annually upon the gains, profits and income from

900 SOUTH CAROLINA LAWS 1912, §§ 354r-3G0.

all property owned, and every business, trade or profession carried on in this State by persons residing without this State, excepting such corporations as are hereinafter excepted: Provided, That in estimating the gains, profits, and income there shall not be included interest upon such bonds or securities of this State, or of the United States, the principal and interest of which are, by law of their issue, exempt from taxation.

Sec. 355. Computation of Incomes. — In computing incomes, the necessary expenses actually incurred in carrying on any business, occupation or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family, shall be deducted from the gross income or revenue; and the word "income" as used in this article, shall be deemed and taken to mean "gross profits : " Provided, That no deduction shall be made or allowed for any amount paid out or contracted for permanent improvements or betterment made to increase the value of any property or estate, or for the increase of capital, capital stock or assets.

Sec. 356. Definitions of Terms. — The words "citizens" and "person" as used in this Article, shall be deemed to include all natural persons, all copartners and all members of any incorporated association, and to exclude, except as hereinafter included, all corporations duly chartered by the laws of the United States.

Sec. 357. When and How Tax shall be collected. — The tax herein provided for shall be assessed, levied, and collected in the same manner, at the same time, as other taxes, and by the same County officials as are now charged with the assessment, levy, and collection of State and County taxes, and shall be paid into the State Treasury as other general State taxes.

Sec. 358. Returns. — How and When Made. — All persons liable for the payment of any of the tax herein provided for shall, at the times now or hereinafter provided by law for the making of returns of personal property, make, under oath, a full and complete list or return, in such form and manner as may be directed by the Comptroller-General, to the Auditor of the County in which they reside ; or, in case of non-residents, of the County or Counties where said gains, profits or income arise, of the amount of their income, gains and profits as aforesaid, and the property or investment, if any, upon which the same are

TENNESSEE CODE, § YIO. 901

computed, and such other particulars as may be required by the Comptroller-General.

Fiduciaries to Make Eeturns. - All persons, whether natural or corporations created by charter, acting as guardians, trustees, executors, administrators, agents or receivers, or in any other fiduciary capacity, shall make and render a list or return as aforesaid to the Auditor of the County in which such persons or corporations acting in a fiduciary capacity reside or do business, of the income, gains and profits of any minor or person for whom they act.

Sec. 359. Penalty for Failing to Make Eeturn. - False Eeturn. - Any person or corporation failing or refusing to make the list or return required in this article, or rendering a wilfully false or fraudulent list or return, shall be assessed by the Auditor on account of said income tax, in such amount as appears to him from the best information obtainable by him either by examination of the defaulting taxpayer or any other evidence, that such taxpayer is liable for; and in case of failure or neglect to make said list or return, the said Auditor shall add fifty per centum as a penalty to the amount of tax due; and in case of a wilfully false or fraudulent return or list having been rendered the Auditor shall add one hundred per centum as a penalty to said tax; the tax and the additions hereto as penalty to be assessed and collected in the manner provided for in the case of failure to make returns or lists of personal property.

Sec. 360. Eeturns Subject to Existing Tax Laws. - In every respect not herein specified the returns for and the levy and collection of the tax provided in this article shall be subject to all the provisions of law relative to the assessment and collection of taxes on personal property.

TENNESSEE INCOME TAX LAW.

[Tenn. Code, § 710.J

"On incomes derived from United States bonds, and all other stocks and bonds not taxed ad valorem, five per cent." Cf. § 7100.

902 VIRGINIA ACTS 1908, Cil. 10.

VIRGINIA INCOME TAX LAW.

[Virginia Acts of 1903, ch. 145, p. 155, Pollard's Va. Code, as amended by acts 1908, ch. 10, p. 20.]

Sec. 10. The classification under Schedule D shall be as

follows, to wit : The aggregate amount of income in excess of one thousand dollars, whether received or due but not received, within the year next preceding the first of February in each year.

Income shall include :

First. All rents, except ground rents or rents charge, salaries, interest upon notes, bonds, or other evidences of debt of whatever description, of the United States, or any other state or country, or any corporation, company, partnership, firm, or individual, collected or received during the year, less the interest due and paid during the year.

Second. The amount of all premiums on gold, silver, or coupons.

Third. The amount of sales of live stock on meat of all kinds, less the value assessed thereon the previous year by the commissioner of the revenue.

Fourth. The amount of sales of wood, butter, cheese, hay, tobacco, grain and other vegetables and agricultural productions during the preceding year, whether the same was grown during the preceding year or not, less all sums paid for taxes and for labor, fences, fertilizers, clover or other seed purchased and used upon the land upon which the vegetable and agricultural productions were grown or produced, and the rent of said land paid by said person, if he be not the owner thereof.

Fifth. All other gains and profits derived from any source whatever.

In addition to the sum of one thousand dollars as aforesaid, there shall be deducted from the income of the person assessed, all losses sustained during the year: Provided further, that only one deduction of one thousand dollars shall be made from the aggregate income of any family, except that guardians may make a separate deduction of one thousand dollars, in favor of each ward, out of income coming to said ward.

Sec. 11. On income, as defined in this schedule, the tax shall be one per centum.

WIS. GENERAL LAWS 1911, CII. 48a. 003

WISCONSIN INCOME TAX LAW.

[Wis, Laws 1911, chap. 658, General Laws 1911, ch. 48a.]

THE INCOME TAX ACT.

Persons and subjects taxable.

Sec. 1. There shall be assessed, levied, collected and paid a

tax upon incomes received during the year ending December 31, 1911, and upon incomes received annually thereafter, by such persons and from such sources as hereinafter described; provided, that firms, copartnerships, corporations, joint stock companies and associations which customarily close their annual accounts on a date other than December 31, or which customarily estimate their income or profits on a basis other than of actual cash receipts and disbursements, may, with the consent and approval of the tax commission, return for assessment and taxation the income or profits earned during the business year for which the accounts of such person are customarily made up.

Definition of terms ; what income taxable.

Sec. 2. 1. The term "person" as used in this act, shall mean and include any individual, firm, copatnership, and every corporation, joint stock company or association organized for profit, and having a capital stock represented by shares, unless otherwise expressly stated.

2. The term "income," as used in this act, shall include:

(a) All rent of real estate, including the estimated rental of residence property occupied by the ovmer thereof.

(b) All interest derived from money loaned or invested in notes, mortgages, bonds or other evidence of debt of any kind whatsoever.

(c) All wages, salaries or fees derived from services; provided that compensation to public officers for public service shall not be computed as a part of the taxable income in such cases where the taxation thereof would be repugnant to the constitution.

(d) All dividends or profits derived from stock or from the purchase and sale of any property or other valuables acquired within three years previous or from any business whatever.

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(e) All royalties derived from the possession or use of franchises or legalized privileges of any kind.

(f) And all other income of any kind derived from any source whatever except such as is hereinafter exempted.

3. The tax shall be assessed, levied and collected upon all income, not hereinafter exempted, received by every person residing within the state, and by every nonresident of the state upon such income as is derived from sources within the state or within its jurisdiction. So much of the income of any person residing within the state as is derived from rentals, stocks, bonds, securities or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or

without the state ; provided, that any person engaged in business within and without the state shall, with respect to income other than that derived from rentals, stocks, bonds, securities or evidences of indebtedness, be taxed only upon that proportion of such income as is derived from business transacted and property located within the state, which shall be determined in the manner specified in subdivision (e) of section 1770b, as far as applicable. (1911, chap. 658.)

Deductions from gross income of corporations.

Sec. 3. Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(a) Payments made within the year for personal services of officers and employes actually employed in the production of such income; provided, there be reported the name, address and amount paid each such officer or employe to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Other ordinary and necessary expenses actually paid within the year, out of income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation of property from which the income is derived. All bonds issued by a corporation shall be deemed an interest in the property and business of such corporation ; and so much of the interest payable on such bonds as is represented by the ratio between the property located and business transacted within this state to the total property and business of such corporation as provided in subdivision 3, of section 1087m-2, shall be

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subject to taxation under this act at the same rate as the income of such corporation. Such tax shall be assessed to the bondholders under the general designation "The bondholders of . ." (inserting the name of the corporation, but shall be a lien upon the property and business of such corporation prior to all other liens, and unless paid by the bondholders shall be enforced against the corporation. When paid by the corporation the amount of such tax may be deducted from the next interest payment on such bonds, unless otherwise provided by contract.

(c) Losses actually sustained within the year and not compensated for by insurance or otherwise.

(d) Sums paid by such person within the year for taxes imposed by any state of this union or subdivision thereof, or any territory or possession of the United States, upon the source from which the income taxed by this act is derived.

(e) Dividends or income received within the year from stocks or interest in any firm, copartnership or corporation,

joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided, such firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each person owning stocks or interest in the same and the amount of dividends or income paid such person during the assessment year.

(f) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

Deductions from incomes of persons other than corporations.

Sec. 4. Persons other than corporations, joint stock companies or associations, in reporting incomes for purposes of taxation shall be allowed the following deductions :

(a) The ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation or business from which the income is derived, including a reasonable allowance for depreciation of the property from which the income is derived. But no deductions shall be made for any amount paid for personal services unless there be reported, the name, address and the amount paid each such employe to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Losses during the year and not compensated for by insurance or otherwise.

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(e) Dividends or incomes received by any person from stocks, or interest in any firm, copartnership, corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided, said firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each such person owning stock or interest in the same and the amount of dividends or income paid such person during the assessment year.

(d) Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the name and address of the creditor.

(e) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

(f) Salaries or other compensation received from the United States by officials thereof.

(g) Pensions received from the United States.

(h) Taxes paid by such persons during the year other than inheritance taxes upon the property or business from which the income hereby taxed is derived.

(i) All inheritances, devises and bequests received during the year upon which an inheritance tax shall have been paid to this state.

(j) Insurance to the total amount of ten thousand dollars, received by any person or persons legally dependent upon the decedent, in payment of a death claim by any insurance company, fraternal benefit society or other insurer. (1911, chap. 658.)

Exemptions.

§ 5, 1. There shall be exempt from taxation under this act income as follows, to wit :

(a) To an individual income up to and including eight hundred dollars ;

(b) To husband and wife, twelve hundred dollars;

(c) For each child under the age of eighteen years, two hundred dollars;

(d) For each additional person, for whose support the taxpayer is legally liable and who is entirely dependent upon the taxpayer for his support, two hundred dollars.

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(e) The aforesaid exemption shall not apply to incomes derived from sources within the state by nonresidents thereof, nor to firms, copartnerships, corporations, joint stock companies nor associations. In computing said exemptions and the amounts of taxes payable under section 1087m-7 (1087m-6) of this act, the income of a wife shall be added to the income of her husband, and the income of each child under eighteen years of age to that of its parent or parents, when said wife or child is not living separately from said husband, parent or parents.

2. Income of any mutual savings or loan and building association, or of any religious, scientific, educational, benevolent or other association of individuals not organized or conducted for pecuniary profit.

3. Incomes derived from property and privileges by persons now required by law to pay taxes or license fees directly into the treasury of the state in lieu of taxes, and such persons shall continue to pay taxes and licenses as heretofore.

4. Income received by the United States, the state and all counties, cities, villages, school districts or other political units of this state. (1911, chap. 658.)

Hates of Taxation. § 6. 1. The tax to be assessed, levied and collected upon the income of all persons, except as otherwise provided by law, after making such deductions and exemptions as are hereinbefore allowed, shall be computed at the following rates, to wit:

(a) On the first one thousand dollars of taxable income or any part thereof, at the rate of one per cent ;

(b) On the second one thousand dollars or any part thereof, one and one-fourth per cent;

(c) On the third one thousand dollars or any part thereof, one and one-half per cent ;

(d) On the fourth one thousand dollars or any part thereof, one and three-fourths per cent;

(e) On the fifth one thousand dollars or any part thereof, two per cent;

(f) On the sixth one thousand dollars or any part thereof, two and one-half per cent ;

(g) On the seventh one thousand dollars or any part thereof, three per cent;

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(h) On the eighth one thousand dollars or any part thereof, three and one-half per cent;

(i) On the ninth one thousand dollars or any part thereof, four per cent;

(j) On the tenth one thousand dollars or any part thereof four and one-half per cent ;

(k) On the eleventh one thousand dollars or any part thereof, five per cent;

(l) On the twelfth one thousand dollars or any part thereof, five and one-half per cent ;

(m) On any sum of taxable income in excess of twelve thousand dollars, six per cent;

2. Providing, however, that the tax to be assessed, levied and collected upon the incomes of corporations, joint stock companies or associations, after making due allowance for deductions as hereinbefore provided, shall be computed at the following rates, to wit:

(a) If the taxable income equals one per cent or less of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one-half of one per cent of such income.

(b) If the taxable income equals more than one, but does not exceed two per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one per cent of such income.

(c) If the taxable income equals more than two, but does not exceed three per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be one and one-half per cent of such income.

(d) If the taxable income equals more than three, but does not exceed four per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two per cent of such income.

(e) If the taxable income equals more than four, but does not exceed five per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two and one-half per cent of such income.

(f) If the taxable income equals more than five, but does not exceed six per cent of the assessed value of the property used

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and employed in the acquisition of such income, the rate of the tax shall be three per cent of such income.

(g) And in like manner the tax upon taxable income shall continue to increase at the rate of one-half of one per cent for each additional one per cent or fractional part thereof that the taxable income bears to the assessed value of the property used and employed in the acquisition of such income, until the rate of profits equals twelve per cent of such assessed value of the property used and employed in the acquisition of such income, when such rate shall continue as a proportional rate of six per cent of such taxable income.

Alternative application of rates to corporations. Sec. 7. The legislature intends subsection 2, of section 1087m-6 of this act, to be a separable part thereof, so that said subsection may fail or be declared invalid without adversely affecting any other part of the act; provided that in event of its failing or being

declared invalid the incomes of corporations, joint stock companies and associations shall be subject and shall be construed to have been subject to taxation at the rates specified in subsection 1, of section 1087m-6, and said incomes shall be reassessed by the tax commission and taxed for the years for which the rates provided in subsection 2, of section 1087m-6, shall have failed. (1911, chap. 658.)

Assessment Districts; Assessors; Deputies. § 8. 1. The state shall be divided into assessment districts by the state tax commission, but in no instance shall a county be divided.

2. Not less than thirty days prior to the first of March, 1912, there shall be selected and appointed by the state tax commission an assessor of incomes for each assessment district in the state, who shall hold office for a term of three years unless sooner removed as hereinafter provided. Such assessor shall be a citizen and an elector of this state, but need not be a resident of the district in which he is appointed to serve ; provided, however, that so far as practicable, preference shall be given in making such appointments to residents of the districts.

3. The tax commission may in its discretion transfer any assessor of incomes from one district to another and may remove any assessor of incomes or his deputy from office.

4. Before entering upon his duties such assessor of incomes

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shall subscribe to the constitutional oath and file the same in the office of the secretary of state.

5. The state tax commission may authorize any assessor of incomes to appoint such deputies and other assistants as may be required for the proper performance of his duties. Such deputies shall qualify in like manner and possess the same powers as the assessor. (1911, chap. 658.)

Salaries of assessors and deputies; expenses and supplies.

Sec. 9. The salaries of the assessors of incomes and their deputies and assistants shall be fixed by the state tax commission, but such salaries, together with the expenses of such assessors and their deputies and assistants, shall not in any year exceed in amount five cents for every thousand dollars of the valuation of all property as fixed by the tax commission in the state assessment of the preceding year. The assessor shall be furnished all necessary printing, stationery and postage, and he and his deputies shall be entitled to receive their actual necessary expenses while traveling in the performance of their duties. The salaries of the assessor and his assistants, and all such expenditures shall be audited and paid out of the state treasury in the same manner as other similar salaries and state expenses are audited and paid.

Assessment of incomes. Sec. 10. 1. The state tax commission and the assessors of income shall annually on the first day of January, or as soon thereafter as practicable, proceed to assess as hereinafter provided every income received during the preceding calendar year liable to taxation under the provisions of this act. The assessment of corporations, joint stock companies and associations shall be made by the state tax commission, and the assessment of persons, other than corporations, joint stock companies and associations shall be by the county assessor of incomes.

2. In the performance of such duty the state tax commission and the county assessors of incomes shall respectively possess all powers now or hereafter granted by law to the state tax commission or assessors in the assessment of personal property and also the power to estimate incomes.

3. Every corporation, joint stock company or association, whether taxable under this act or not, shall furnish to the tax commission a true and accurate statement at such time, in such

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manner and form and setting forth such facts as said commission shall deem necessary to enforce the provisions of this act. Such statement shall be made upon the oath or affirmation of the president, vice president or other principal officer and the treasurer of said corporation, joint stock company or association.

4. Whenever in the judgment of the assessor of incomes any person in his district other than a corporation, joint stock company or association shall be subject to an income tax under the provisions of this act, he shall require such person to make report in such manner and form as the tax commission may prescribe, specifying particularly among other items the amount of income received from services, unsecured notes, mortgages, bonds, stocks, real estate and other such information as the commission shall deem necessary to enforce the provisions of this act.

5. Every guardian, trustee, executor, administrator, agent or receiver, and every other person or corporation acting in a fiduciary capacity, shall make and render to the assessor of incomes of the district in which such representative resides, a verified list or return as aforesaid of the amount of income of any such person, ward or beneficiary. The return so made shall be signed by the person rendering it, and by the president or secretary thereof, if a corporation.

6. For each question unanswered the assessor or deputy assessor, failing to present satisfactory cause for such omission to the state tax commission, shall be subject to a penalty of five dollars, and said penalty shall be deducted from the compensation of said assessor or deputy assessor at the time such com-

pensation is paid.

Incorrect returns by corporations; penalty for fraud and refusal to make return. Sec. 11. 1. Whenever evidence shall be produced before the state tax commission, which in the opinion of the commission, justifies the belief that in any one or more of the three next previous years the returns made by any corporation, joint stock company or association are incorrect, or are made with false or fraudulent intent, or when any corporation, joint stock company or association has failed or refused to make a return as required by law the state tax commission may require from every such corporation, joint stock company

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or association such further information with reference to its capital, income, losses, expenditures and business transactions as is deemed expedient. Upon the information so required the state tax commission may make such additions or corrections to the assessment as is deemed true and just, such correction to be made in the next tax levy. Whenever the state tax commission shall so increase or make subject to tax any income, it shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any corporation, joint stock company or association is made with false or fraudulent intent or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate. The amount so added to the tax shall be collected at such time and in such manner as may be designated by the state tax commission.

3. In case of neglect occasioned by sickness or absence of an officer of any corporation, joint stock company or association required to make said return, or for other sufficient reason, the state tax commission may allow such further time for making and delivering such return as it may deem necessary, not to exceed thirty days.

4. If any of the corporations, joint stock companies or associations aforesaid shall fail or refuse to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association shall be liable to a penalty of not less than one hundred dollars and not to exceed five thousand dollars at the discretion of the court.

5. Any officer of a corporation, joint stock company or association required by law to make, render[^] sign or verify any return who makes any false or fraudulent return or statement, with intent to defeat or evade the assessment required by this act to be made, shall upon conviction be fined not to exceed five

hundred dollars or be imprisoned not to exceed one year, or both, at the discretion of the court, with the cost of prosecution.

Incorrect returns by individuals ; penalty for frauds and refusal to make returns. Sec. 12. 1. Whenever the assessor of

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incomes or the county board of review herein provided for shall have reason to believe that in any one or more of the three next previous years the returns made by any person other than a corporation, joint stock company, or association are incorrect or are made with false or fraudulent intent, or when any such person has failed or refused to make a return as required by law, the assessor or county board of review shall make such additions or corrections to the next assessment as he or they shall deem true and just. Whenever the assessor or the county board of review shall so increase or make subject to tax any income he or they shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any person other than a corporation, joint stock company or association is made with false or fraudulent intent, or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate.

3. Any person other than a corporation, joint stock company or association who fails or refuses to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return shall upon conviction be fined not to exceed five hundred dollars, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the cost of prosecution.

Hearing of grievances. Sec. 13. Any corporation, joint stock company or association subject to assessment by the state tax commission, feeling aggrieved by the decision of said commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission.

County board of review. Sec. 14. The state tax commission shall appoint three resident taxpayers of each county to serve as a county board of review, and shall fix their compensation, which shall not be more than ten dollars per day, and shall be audited and paid in the same manner as the salary of assessors under this act is paid.

Clerk ; record of proceedings. Sec. 15. The county clerk
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shall be clerk of such board, and shall keep an accurate record of all proceedings thereof, including a correct record of all changes in the assessment rolls made by the board. The county clerk shall take full minutes of all evidence given before the board; provided, however, that the board, with the approval of the assessor of incomes, may in cases where they deem it advisable, employ a stenographic reporter to take such evidence in shorthand, and extend the same in typewritten form. The county clerk shall preserve in his office a record of all such proceedings, minutes and evidence taken, and all documentary evidence offered. The stenographer shall be paid by the state, but the board may, in its discretion, charge the expenses to the complaining party or parties appearing before the board.

Meetings of board ; quorum ; proceedings in general. Sec. 16.

1. The county board of review of each county, constituting an assessment district, shall meet annually on the last Monday of July at ten o'clock A. M. at the courthouse in said county to hear complaints and to review the assessments of income made by the assessor. A majority shall constitute a quorum.

2. In assessment districts composed of more than one county the board of review of the county designated by the assessor of incomes shall meet as provided above and the board of review of each remaining county of the district shall meet as soon thereafter as is possible for the assessor of incomes to be present. The date of such meeting shall be fixed by the assessor of incomes.

3. Notice of the annual meeting of each county board of review shall be published in a newspaper of the county at least one week previous to such meeting.

4. The board may adjourn from day to day, and from time to time, until its business is completed, but no adjournment other than from day to day. shall be had except upon written request and for satisfactory cause shown.

■ 5. Attendance of witnesses and the production of books and papers before said board may be compelled by subpoena, issued by the clerk thereof, a justice of the peace or a court commissioner.

Hearing and determination. Sec. 17. 1. The board shall hear and examine, and permit the assessor to examine, any aggrieved or other person upon oath who shall appear before it

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in relation to any assessment or omission of income, and may increase or lessen the amount of any income assessed, if satis-

fied from the evidence submitted and the statements of the assessor, that such change should be made.

The board shall not increase any assessments, nor assess any income not on the roll without notice in writing to the person liable for payment of the tax thereon, or his agent, if either be a resident of the county, of such intention in time to appear and be heard before the board in relation thereto.

Exclusive original jurisdiction. Sec. 18. No person subject to assessment by the county assessor shall be allowed in any action or proceeding to question any assessment of income, unless objections thereto shall first have been presented to the county board of review in good faith and full disclosure made under oath of any and all income of such party liable to assessment.

Appeal and review. Sec. 19. 1. Any person dissatisfied with any determination of the county board of review may appeal within twenty days to the state tax commission, to whom a copy of the record of the board shall be certified, together with all evidence or a copy thereof, relating to such assessments

2. The tax commission shall review such assessments from the record thus submitted and shall make necessary corrections and certify its conclusion to the county clerk, who shall duly notify the person liable for the tax and enter upon the assessment roll any change by the commission.

Assessment of corporations and tax computation certified to county clerk ; report of tax commission. Sec. 20. 1. The state tax commission shall complete the assessment of income for each corporation, joint stock company, and association, on or before the fifteenth day of October in each year, and compute the tax thereon, and shall thereupon certify to each county clerk a statement of the assessment of each corporation, joint stock company and association in his county and the amount of tax levied against each.

2. The state tax commission shall submit in their biennial report the amount of income tax collected for each county in the state, and shall designate the several general classes of property from which the incomes were received, the cost to the state and each county for the administration of the law, and all such

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facts as shall be required to give a definite understanding of the financial operations of the law.

Computation of tax on individuals ; certified to clerks. Sec. 21. The tax upon the income of persons other than corporations, joint stock companies and associations shall be computed by the county clerk, assisted by the assessor of incomes and said clerk shall on or before November 1, certify to each town,

city and village clerk the names of all persons whose incomes are assessed in his own town, city or village, and the amount of tax levied against each such person, and such amount shall be entered by the town, city and village clerks in a separate column designated "Income Tax" upon the tax roll of the year, and shall be collected and paid as personal property taxes are now collected and paid.

Situs of taxation. Sec. 22. The place at which the income tax herein provided for shall be assessed, levied and collected, shall be determined as follows:

(1) In their return for purposes of assessment persons deriving incomes from within and without the state, or from more than one political subdivision of the state, shall make a separate accounting of the income derived from without the state, and from each political subdivision of the state in such form and manner as the tax commission may prescribe.

(2) The entire taxable income of every person deriving income from within and without the state or from within different political subdivisions of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper exemptions and the proper rate of taxation. The taxable income so computed shall be assessed, and taxes at such rate shall be paid, in the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income derived from without the state when taxable as having been derived from the town, city or village in which said person resides.

(3) Income derived by nonresidents of the state from sources within the state or within its jurisdiction, shall be separately assessed and taxed in the town, city or village from which such income is derived, at a rate determined by the total income derived from within any single town, city or village.

(4) All laws not in conflict with the provisions of this act

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regulating the time, place and manner of payment of taxes on personal property, the collection thereof by action, distress or otherwise and the return of personal property taxes unpaid, shall apply to the income tax herein provided for.

Apportionment of revenue. Sec. 23. The revenue derived from such income tax shall be divided as follows, to wit: Ten per cent to the state, twenty per cent to the county and seventy per cent to the town, city or village in which the tax was assessed, levied and collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

Penalty for divulging information. Sec. 24. 1. No com-

missioner, assessor of incomes, deputy, member of a county board of review or any other officer, agent, clerk or employe shall divulge or make known to any person in any manner except as provided by law any information whatsoever obtained directly or indirectly by him in the discharge of his duties, or permit any income return or copy thereof or any paper or book so obtained to be seen or examined by any person except as provided by law.

2. Any officer, agent, clerk or employe violating any of the provisions of this section shall upon conviction thereof be punished by -a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the state prison for not more than two years, at the discretion of the court.

3. Such officer, agent, clerk or employe upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of three years thereafter.

4. Nothing herein shall be construed as preventing the assessment roll, the tax roll, and all proceedings had before the county board of review and all evidence taken at such hearing from being open to public inspection at such times and under such conditions as the state tax commission may direct.

Duties of county supervisor conferred on assessor of incomes. Sec. 25. 1. On and after the first Monday in January, 1912, the office of county supervisor of assessment is hereby abolished.

2. The assessor of incomes shall on and after the first Mon-

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day of January, 1912 in addition to the duties and powers herein imposed and conferred upon him, perform all the duties and possess all the powers heretofore imposed and conferred by law upon the said county supervisor of assessment. The assessor of incomes shall be under the direction and control of the state tax commission and shall make such reports to the commission to the county board of review and the county board of supervisors, and perform such other duties as the commission shall direct.

Personal property and bank tax credited. Sec. 26. Any person who shall have paid a tax upon his personal property during any year shall be permitted to present the receipt therefor to, and have the same accepted by, the tax collector to its full amount in the payment of taxes due upon the income of such person during said year. Any bank which has paid taxes during any year upon its shares assessed to the individual stockholders thereof shall be entitled, under the provisions of this section, to present the receipt therefor, and have the same ac-

cepted by the tax collector to its full amount in the payment of taxes due upon the income of such bank during said year.

Taxation for 1911 not affected. Sec. 27. Nothing contained in this act shall be construed to affect the assessments or collection of taxes assessed in the year 1911 or prior thereto, under present laws, nor to limit the power of assessors and boards of review relative to correcting assessment rolls, placing omitted property thereon, and re-assessing property whenever such correction, insertion of omitted property, or re-assessment might be made under the laws as they now exist.

Rules and regulations. Sec. 28. The state tax commission is hereby empowered to make such rules and regulations as it shall deem necessary in order to carry out foregoing provisions.

Employment of clerks and specialists. Sec. 29. The state tax commission is hereby authorized to employ such clerks and specialists as are necessary to carry into effective operation this act.

Appropriations. Sec. 30. There is hereby appropriated from the general fund of the state, out of any money in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this act.

PART VI.

IMPORTANT BRITISH INCOME TAX LAWS.

IMPOETAISTT BEITISH INCOME TAX LAWS.
THE INCOME TAX ACT OF 1842.

5 & 6 Vict. c. 35.
Cap. XXXV.

An Act for granting to Her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices, until the Sixth Day of April One thousand eight hundred and forty-five. [22d June 1842.]

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal Subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary Supplies to defray Your Majesty's public Expences, and making an Addition to the public Eevenue, have freely and voluntarily resolved to give and grant unto Your Majesty .the several Kates and Duties herein-after mentioned ; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the Authority of the same. That from and after the Fifth Day of April One thousand eight hundred and forty-two there shall be charged, raised, levied, collected, and paid, unto and for the Use of Her Majesty, Her Heirs and Successors, during the Term herein-after limited, the several Rates and Duties men-

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tioned in the several Schedules contained in this Act, and marked respectively (A.), (B.), (C), (D.), and (E.) ; (that is to say,)

Schedule (A.)

For all Lands, Tenements, and Hereditaments, or Heritages in Great Britain there shall be charged yearly, in respect of the Property thereof, for every Twenty Shillings of the annual Value thereof, the Sum of Seven-pence:

Schedule (B.)

For all Lands, Tenements, and Hereditaments in England there shall be charged yearly, in respect of the Occupation thereof, for every Twenty Shillings of the annual Value thereof, the Sum of Three-pence Halfpenny:

For all Lands, Tenements, and Heritages in Scotland there shall be charged yearly, in respect of the Occupation thereof, for every Twenty Shillings of the annual Value thereof, the Sum of Two-pence Halfpenny:

Schedule (C.)

Upon all Profits arising from Annuities, Dividends and Shares of Annuities, payable to any Person, Body Politic or Corporate, Company or Society, whether Corporate or not Corporate, out of any public Revenue, there shall be charged yearly, for every Twenty Shillings of the annual Amount thereof, the Sum of Seven-pence, without Deduction.

Schedule (D.)

Upon the annual Profits or Gains arising or accruing to any Person residing in Great Britain from any Kind of Property whatever, whether situate in Great Britain or elsewhere, there shall be charged yearly, for every Twenty Shillings of the Amount of such Profits or Gains, the Sum of Seven-pence; and upon the annual Profits or Gains arising or accruing to any Person residing in Great Britain, from any Profession, Trade, Employment, or Vocation, whether the same shall be

respectively carried on in Great Britain or elsewhere, there shall be charged yearly, for every Twenty Shillings of the Amount of such Profits or Gains, the Sum of Seven-pence:

And upon the annual Profits or Gains arising or accruing to any Person whatever, whether a Subject of Her Majesty or not, although not resident within Great Britain, from any Property whatever in Great Britain, or any Profession, trade, Employment, or Vocation exercised within Great Britain, there shall be charged yearly, for every Twenty Shillings of the Amount of such Profits or Gains, the Sum of Seven-pence:

Schedule (E.)

Upon every public Office or Employment of Profit, and upon every Annuity, Pension, or Stipend payable by Her Majesty or out of the public Revenue of the United Kingdom, except Annuities before charged to the Duties in Schedule (C), for every Twenty Shillings of the annual Amount thereof respectively, there shall be charged yearly the Sum of Seven-pence.'

II. And be it enacted. That upon every fractional Part of Twenty Shillings of the annual Profits or Gains aforesaid. the like Proportion of Duty, at the Rate before directed, shall be charged ; provided no Rate or Duty shall be charged of a lower Denomination than One Penny.^

III. And be it enacted. That the Duties by this Act granted shall be under the Direction and Management of the Commissioners of Stamps and Taxes for the Time being, who are hereby empowered to employ all such Officers or other Persons, and to do all such other Acts and Things, as may be deemed necessary or expedient for the raising, collecting, receiving, and accounting for the said Duties, and for putting this Act into execution, in the like and in as full and ample a Manner as they are authorized to do with relation to any other Duties under their Care and Management; and that* the said Duties hereby granted arising in England shall be assessed, raised,

1 Repealed by 37 & 38 Vict., c. 96. tion is repealed by 37 & 38 Vict.,

8 Repealed by 37 & 38 Viet., c. 96. c. 96.

* The preceding part of this sec-

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levied, and collected under the Regulations of an Act passed in the Forty-third Year of the Reign of King George the Third, intituled An Act for consolidating certain of the Provisions contained in any Act or Acts relating to the Duties

under the Management of the Commissioners for the Affairs of Taxes, and for amending the same, and other Acts relating thereto, or for explaining, altering, or amending the same ; and the said Duties arising in Scotland shall be assessed, raised, levied, and collected under the Regulations of an Act passed in the same Session of Parliament, intituled An Act for consolidating certain of the Provisions contained in any Act or Acts relating to the Duties under the Management of the Commissioners for the Affairs of Taxes, and for amending the said Acts, so far as the same relate to that Part of Great Britain called Scotland, and other Acts relating thereto, or for explaining, altering, or amending the same; and all the Powers, Authorities, Methods, Rules, Directions, Penalties, Clauses, Matters, and Things now in force, contained in or enacted by the several Acts before recited or referred to, or any other Acts relating to the Duties of Assessed Taxes, and also all the Powers, Authorities, Rules, Regulations, Directions, Penalties, Clauses, Matters, and Things contained in or enacted by Two several Acts of Parliament, passed respectively in the Forty-eighth and Fiftieth Years of the Reign of King George the Third, and intituled, respectively, An Act to amend the Acts relating to the Duties of Assessed Taxes, and of the Tax upon the Profits of Property, Professions, Trades, and Offices, and to regulate the Assessment and Collection of the same, and An Act to regulate the Manner of making Surcharges of the Duties of Assessed Taxes, and of the Tax upon Profits arising from Property, Professions, Trades, and Offices; and for amending the Acts relating to the said Duties respectively, whether such last-mentioned Powers, Authorities, Rules, Regulations, Directions, Penalties, Clauses, Matters, and Things shall be in force at the Time of the passing of this Act or not, and notwithstanding that the same or any Part thereof may have expired or been repealed, shall severally and respectively be and become in full Force and Effect with respect to the

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Duties hereby granted, and shall be severally and respectively duly observed, applied, practised, and put in execution throughout the respective Parts of Great Britain, for raising, levying, collecting, receiving, accounting for, and securing of the said Duties hereby granted, and for auditing the Accounts thereof, and otherwise relating thereto, so far as the same shall not be superseded by and shall be consistent with the express Provisions of this Act, as fully and effectually, to all Intents and Purposes, as if the same Powers, Authorities, Methods, Rules, Directions, Penalties, Clauses, Matters, and Things were particularly repeated and re-enacted in the Body of this Act with reference to the said Duties hereby granted, and respectively applied to such Parts of Great Britain as aforesaid; and all and every the Regulations of such Acts (except as aforesaid) shall be applied, construed, deemed, and taken to refer to this Act, and to the Duties hereby granted, in like Manner as if the same had been enacted therein.

IV. And whereas it is expedient to appoint Commissioners for the General Purposes of this Act from and amongst the Persons appointed Commissioners for the Execution of an Act passed in the Thirty-eighth Year of the Keign of King George the Third, intituled An Act for granting an Aid to His Majesty by a Land Tax, to he raised in Great Britain, for the Service of the Year One thousand seven hundred and ninety-eight, or from and amongst the Persons appointed Commissioners for the Execution of the said Act by any subsequent Act of Parliament passed or to be passed, to act in the Execution of this Act, so far as relates to the Powers hereby vested in such Commissioners; be it enacted. That the several Persons appointed or to be appointed Commissioners for putting in execution the said Land Tax Act in the respective Parts of Great Britain therein mentioned, being respectively qualified to act as Commissioners in the Execution of the said Land Tax Act, shall meet within the County, Riding, Shire, or Stewartry, or within each Hundred, Rape, Lathe, or Wapentake of the County, Riding, Shire, or Stewartry for which they are or shall be respectively appointed Commissioners of the said Land Tax Act, or within such other Division of the said Coun-

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tj, Eiding, Shire, or Stewartry as thie Commissioners of Stamps and Taxes shall direct, and also within each City, Borough, Cinque Port, Liberty, Franchise, Town, and Place for which separate Commissioners have been appointed with exclusive Jurisdiction for putting in execution the said Land Tax Act within the same, which Meetings shall be convened from Time to Time by the Commissioners of Stamps and Taxes, when and as they shall deem necessary, by Notice inserted in the London Gazette and Edinburgh Gazette for England and Scotland respectively, and shall be held at such Time and Place as shall be appointed by such Notice; and at every such Meeting the said Commissioners of the Land Tax Act, or the major Part of them then present, shall choose and set down in Writing the Names of such of the Commissioners appointed as aforesaid who shall respectively be qualified as herein-after is required, and who shall be fit and proper to act as Commissioners for the General Purposes of this Act in such County, Riding, Shire, or Stewartry aforesaid, and in each and every District within each respective Hundred, Rape, Lathe, Wapentake, or other Division aforesaid, and within each City, Borough, Cinque Port, Liberty, Pranchise, Town, and Place aforesaid, observing always in the Execution of this Act the same Limits which shall have been or may be settled for the Districts under the Acts relating to the Duties of Assessed Taxes; and the Names of such Persons who shall be so chosen shall be set down in the Order in which the major Part of the Commissioners then present shall judge fit they should respectively be appointed Commissioners in their respective Districts; and any Seven, or any less Number than Seven, not being in any Case less than Three, of the Persons so set down, and in the Order in which they shall be so set down in such List, shall be Commis-

sioners for the General Purposes of this Act, and of the Duties granted as aforesaid, and they are hereby required to take upon themselves the Execution of this Act, and of the said Duties, as such Commissioners for General Purposes; and any Seven, or any less Number than Seven, not being in any Case less than Three, of the Persons so set down next in order in the List of Names before mentioned, shall be Commissioners

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to supply Vacancies as the same may arise in the Manner herein-after mentioned: Provided always, that if at any such Meeting as aforesaid the Commissioners shall not find amongst the Commissioners appointed for executing the said Land Tax Act, and set down in manner aforesaid, the Names of Seven Persons to act and Seven others to supply Vacancies in each such District, it shall be lawful for them to appoint any Persons residing within such District who shall respectively be qualified as herein-after is required, and who in their Judgment shall be fit and proper, to be Commissioners for the General Purposes of this Act, until the Number of Seven in each such List shall be completed, although such Persons shall not have been appointed to act as Commissioners in the Execution of the said Land Tax Act : Provided also, that if at such Meeting the Commissioners shall not find and set down Fourteen Persons of the Descriptions before mentioned to act as Commissioners and to supply Vacancies in each such District, it shall be lawful for them to select such Number of Persons as shall be requisite from the Persons acting as Commissioners for executing the said Land Tax Act in or for any adjoining or neighbouring District of the same County, Riding, Division, Shire, Stewartry, City, Town, or Place, in order that there shall be no Failure in the Execution of this Act; and the Names of such respective Persons who shall have been so chosen as aforesaid shall be transmitted to the Head Office for Stamps and Taxes in England and Scotland respectively in the Order in which they shall have been set down in such Lists: Provided always, that where Seven Persons, qualified as herein-after is required, shall be chosen to act as Commissioners for any District as aforesaid, no other Person shall interfere as a Commissioner in the Execution of this Act so long as such Seven Persons shall continue to act, except in the Cases herein-after mentioned.*

V. And be it enacted. That within and for each of the Cities

* The words "And be it enacted, be it enacted," are repealed wherever that;" the word "that" where it occurs they occur in this and subsequent sections by 51 & 52 Vict., c. 57. ductory words, and the words "And

and Towns herein-after mentioned, (videlicet j) London, Bristol, Exeter, Eington-upon-Hull, Newcastle-upon-Tyne, Norwich, Birmingham, Liverpool, Leeds, Manchester, King's Lynn, and Great Yarmouth, it shall be lawful for the Persons herein-after, mentioned to choose Commissioners, and Persons to supply their Vacancies, to act together with the Persons to be chosen or appointed as before directed; and that in and for the City of London Two Commissioners, and Two to supply their Vacancies, shall be named by the Mayor and Aldermen of London out of Eight Persons, Four of whom shall be Aldermen, to be returned to them by the Common Council ; Two other Commissioners, and Two to supply their Vacancies, by the Governor and Directors of the Bank of England; One other Commissioner, and One other to supply his Vacancy, by each of the Companies herein-after mentioned; (videlicet,) the Directors of the East India Company, the Governor and Directors of the South Sea Company, the Governor and Directors of the Royal Exchange Assurance Company, the Governor and Directors of the London Assurance Company, the Directors for conducting and managing the Affairs of the East and West India Dock Company, and the Directors for conducting and managing the London Dock Company and the Saint Katherine Dock Company, respectively, for the Time being; and that it shall be lawful for the Magistrates and Justices of the Peace acting in and for the City of Norwich to choose Eight Persons to be Commissioners, and Eight Persons to supply their Vacancies, not more than Four of the said Eight Commissioners, and not more than Four of the said Eight Persons to supply their Vacancies, to be chosen from out of the said Magistrates and Justices, and the remaining Four Commissioners, and Four Persons to supply their Vacancies, to be chosen from the Inhabitants of the said City; and in and for each of the other Cities and Towns before mentioned it shall be lawful for the Magistrates and Justices of the Peace acting in and for the said Cities and Towns respectively, together -with the Justices of the Peace acting in and for the County, Eiding, or Division wherein the same respectively are situate, to choose Eight Persons to be Commissioners, and Eight Persons to supply their Vacancies,

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as herein is mentioned ; and the Persons so to be chosen by the Land Tax Commissioners as aforesaid, together with the other Persons respectively to be chosen as herein is particularly directed, shall be Commissioners for the Purposes of this Act, and to supply their Vacancies, as the same may arise, within and for the several Districts in which such Cities and Towns respectively shall be situate, or which shall be formed by such Cities and Towns respectively, and for such other yiaces which have usually been assessed in the same District with such Cities and Towns respectively towards the Aid by a Land Tax; and the l^^ames of all Persons so chosen as last aforesaid shall be returned to the Commissioners of Stamps and Taxes.*

VI. Provided always, and be it enacted. That in case there shall not be a sufficient number of Commissioners chosen or appointed for General Purposes as aforesaid, or to supply Vacancies, capable of acting according to the Qualification required by this Act for any City, Borough, Town, or Place, then and in every such Case any Person qualified to act for the County at large, or Riding, Shire, or Stewartry, in which or adjoining which such City, Borough, Town, or Place shall be situate, may be chosen to act as a Commissioner for such City, Borough, Town, or Place: Provided also, that any Person residing in any County, Eiding, Division, Shire, Stewartry, City, Town, or Place where a Commissioner shall be wanting, and qualified as herein-after mentioned, who shall be willing to act as a Commissioner for General Purposes as aforesaid, in any District where a Commissioner shall be wanting, may be chosen in manner aforesaid to be such Commissioner, although such Person shall not have been appointed to act in the Execution of the said Land Tax Act; any thing herein-before contained to the contrary notwithstanding.

VII. And be it enacted. That when any Commissioner for General Purposes shall die, or decline to act, or having begun to act shall decline to act any further therein, the remaining

5 Ibid. The words "the governor dia Company, the governor and directors of", vrhich precede rectors of the South Sea Company", "the Bank of England", and the are repealed by 37 & 38 Viet., c. 96. words "the directors of the East In-

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Commissioners shall choose One or more of the Persons on the List to supply Vacancies, who shall be appointed in the Place of the Commissioner so refusing or declining to act, or dying, provided the Person so to be appointed to supply such Vacancy shall have been chosen in the same Manner as the Person so refusing or declining to act, or dying; and the several Commissioners of Land Tax shall at such their Meetings, convened in manner aforesaid, and the several Persons authorized to appoint Commissioners for the several Cities and Tov?ns aforesaid shall, on Notice thereof from the Clerk to the acting Commissioners for the same Cities and Towns respectively, as often as Occasion shall require, select and add new Names to the Persons before chosen to supply Vacancies, who shall respectively be Commissioners for General Purposes, as and when such Vacancies shall happen: Provided always, that if the List for supplying Vacancies to be made and renewed as aforesaid shall at any Time be defective, so that the due Number of Commissioners cannot be supplied therefrom, the same shall be filled up and renewed from Time to Time by the acting Commissioners for General Purposes in the District where such Failure shall have happened.

VIII. And be it enacted. That if in any District there shall be a Neglect in appointing Commissioners for General Purposes as hereby is directed, or the Commissioners so appointed shall neglect or refuse to act, or having begun to act shall decline to act further therein, it shall be lawful for the Commissioners appointed to execute the said Land Tax Act, being respectively qualified as directed by this Act, and they and every of them, not in any Case exceeding the Number of Seven, on Notice of such Neglect and Want of Appointment, given to their Clerk, by any Inspector or Surveyor of Taxes duly authorized to give such Notice by the Commissioners of Stamps and Taxes, shall and they are hereby strictly enjoined and required to take upon themselves forthwith the Execution of this Act, and to do and execute all Matters and Things which Commissioners chosen in pursuance of this Act are hereby required and empowered to do; and if in any District there shall be a Want of such last-mentioned Commissioners, the

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Commissioners of any adjoining District in the same County, Riding, or Division, Shire or Stewartry, being respectively qualified as directed by this Act, shall, on like Notice as aforesaid, execute this Act as such Commissioners, by themselves, or in concurrence with any Persons willing to act as Commissioners of the District where this Act shall require to be executed; and if the Persons aforesaid to whom such Notice shall have been given shall not take upon themselves the Execution of this Act, within Ten Days next after such Notice given, or shall not proceed therein with due Diligence, then and in every such Case it shall be lawful for the Commissioners for Special Purposes, to be appointed under the Authority of this Act, to execute this Act in such District in all Matters and Things hereby directed to be done by Commissioners for General Purposes : Provided always, that where Commissioners willing to act in each District shall not be returned to the Head Office for Stamps and Taxes in England and Scotland respectively as aforesaid, then and in such Case it shall be lawful for the said Commissioners of Stamps and Taxes to cause such Notices as aforesaid to be given to Two or more of the Persons on whom the Burden of executing this Act shall devolve in pursuance of the Directions of this Act before mentioned.'

IX. And be it enacted. That the Commissioners to be appointed for General Purposes in manner aforesaid shall appoint a Clerk, and if necessary an Assistant Clerk, for the Duties to be assessed by them in each District, who shall execute their Office according to the Regulations of this Act and the Acts herein respectively mentioned or referred to; and every such Clerk and Assistant shall act as such, as well in all Matters and Things to be done by, under, and before the respective Commissioners for General Purposes, as by, under, and before the respective Additional Commissioners hereinafter mentioned in the respective Districts; provided that no

more than One Clerk's Assistant shall be appointed for any District without the Approbation of the Commissioners of Stamps and Taxes, on a Statement made to them by the Com-

6 The words: "And be it enact- stewartry," are repealed by 53 & 54 ed," "shire, or stewartry," "shire, Vict., c. 51. Foster Income Tax. - 59.

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missioners for General Purposes of the Necessity thereof in consideration of the Extent or Population of the District ; and if any Clerk or Clerk's Assistant appointed under the Authority of this Act, who shall have taken the Oath herein-after required, shall wilfully obstruct or delay the Execution of this Act, or shall negligently conduct or -wilfully misconduct himself in the Execution of this Act, he shall forfeit the Sum of One hundred Pounds, and shall be dismissed from the said Office, and be rendered incapable of again acting as Clerk or Clerk's Assistant in the Execution of this Act or any other Act for granting Duties under the Management of the Commissioners of Stamps and Taxes.

X. And be it enacted, That no Person herein required to be qualified in respect of Estate shall be capable of acting as a Commissioner for General Purposes in the Execution of this Act for any District or Division of any County at large within England (the County of Monmouth and the Dominion of Wales excepted), or of any of the Ridings of the County of York, or of the County or Divisions of Lincoln, or in or of any of the several Cities and Towns of London, Westminster, Bristol, Exeter, Kingston-upon-Hull, Newcastle-upon-Tyne, Norwich, Birmingham, Liverpool, Leeds, Manchester, King's Lynn, and Great Yarmouth, unless such Person be seised or possessed of Lands, Tenements, or Hereditaments in Great Britain of the Value of Two hundred Pounds per Annum or more, of his own Estate, being Freehold or Copyhold, or Leasehold for a Term whereof not less than Seven Years are unexpired, over and above all Ground Eeiits, Incumbrances, and Reservations payable out of the same respectively, or unless such Person shall be possessed of Personal Estate of the Value of Five thousand Pounds, or a Personal Estate, or an Interest therein, producing an annual Income of Two hundred Pounds, or of Lands, Tenements, or Hereditaments, and Personal Estate, or an Interest therein, being together of the annual Value of Two hundred Pounds, estimating in every such Case One hundred Pounds Personal Estate as equivalent to Four Pounds per Annum, and an Interest from Personal Estate of Four Pounds per Annum as equivalent to One hundred Pounds Per-

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sonal Estate, or unless such Person be the eldest Son of some

Person who shall be seised or possessed of a like Estate of Thrice the Value required as the Qualification of a Commissioner, in right of his own Estate, for such County at large, Riding, Division, or City.

XI. And be it enacted, That no Person herein required to be qualified in respect of Estate shall be capable of acting as a Commissioner for General Purposes in execution of this Act in any District or Division of the County of Monmouth^ or of any County in Wales, or for any City, Borough, Cinque Port, Liberty, Eranchise, Town, or Place in England or Wales (other than the Cities and Towns herein-before mentioned), unless such Person be seised or possessed of an Estate of the like Nature and of Pour Fifths of the Value loquired for the Estate of a Commissioner acting for a District or Division of a County at large in England as aforesaid, or unless such Person be the eldest Son of some Person who shall be seised or possessed of some Estate of Thrice the Value required as the Qualification of a Commissioner, in right of his own Estate, for the same County, City, Borough, Cinque Port, Liberty, Franchise, Town, or Place.

XII. And be it enacted, That no Person hereby required to be qualified in respect of Estate shall be capable of acting as a Commissioner for General Purposes in execution of this Act for any Shire or Stewartry in Scotland unless such Person be enfeoft in Superiority or Property, or possessed as Proprietor or Life Renter, of Lands in Scotland to the Extent of One hundred and fifty Pounds Scots per Annum valued Rent, or unless such Person be possessed of Personal Estate of the Value of Five thousand Pounds, or of Personal Estate, or an Interest therein, producing an annual Income of Two hundred Pounds Sterling, or be enfeoft or possessed as aforesaid of Lands and Personal Estate, or an Interest therein, being together of the annual Value of Two hundred Pounds Sterling, estimating in every such Case One hundred Pounds Personal Estate as equivalent to Four Pounds per Annum, and an Interest from Personal Estate of Four Pounds per Annum as equivalent to One hundred Pounds Personal Estate, or unless such Person be the

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eldest Son of some Person who shall be enfeoft or possessed of a like Estate of Twice the Value required as the Qualification of a Commissioner in right of his own Estate, for such Shire or Stewartry.

XIII. And be it enacted, That no Person herein required to be qualified in respect of Estate shall be capable of acting as a Commissioner for General Purposes in execution of this Act for any City or Borough in Scotland unless such Person be enfeoft or possessed of an Estate of the like Nature and of Three Fifths of the Value required for the Estate of a Commissioner acting for any Shire or Stewartry in Scotland, or unless such Person be the eldest Son of some Person enfeoft or possessed of

some Estate of Thrice the Value required as the Qualification of a Commissioner, in right of his own Estate, for the same City or Borough.'

XIV. Provided always, and be it enacted, That no Estate consisting of Lands or Tenements, as the Qualification of a Commissioner, shall be required to be situate in the County, Hiding, Division, Shire, or Stewartry for which any Person shall be a Commissioner: Provided also, that the Proof of Qualification where required shall lie on the Person acting in the Execution of this Act, in such Manner as is by Law directed with respect to Commissioners acting in the Execution of the said Land Tax Act.'

XV. Provided also, and be it enacted, That nothing herein contained shall be construed to require any Qualification of a Commissioner in the District of the Palaces of Whitehall and Saint James Westminster, for any Officer who shall have heretofore acted or may hereafter act as a Commissioner for putting in execution the said Land Tax Act in the said District, other than the Possession of their respective Offices ; nor in any Shire or Stewartry in Scotland, for any Provost, Baillie, Dean of Guild, Treasurer, Master of the Merchants Company, or Deacon Convenor of the Trades for the Time being of any Royal Burgh

"> The words "And be it enacted, ' The words "And be it enacted, that" and "or stewartry," wherever that" and "shire, or stewartry" are they occur, in this and subsequent repealed by 53 & 54 Vict., c. 51. sections are repealed by 53 & 54 Vict., c. 51.

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in Scotland, nor any Baillie for the Time being of any Borough of Regality or Barony of Scotland, nor the Factors for the Time being on the several forfeited Estates annexed to the Crown by an Act passed in the Twenty-fifth Year of the Reign of King George the Second, who shall be respectively appointed Commissioners for executing the said Land Tax Act in any Shire or Stewartry in Scotland; nor for any Commissioner for Special Purposes acting in the Execution of any of the Powers or Provisions of this Act.

XVI. And be it enacted, That whenever it shall be deemed by the Commissioners for the General Purposes of this Act to be expedient that certain of the Powers herein contained shall be executed by Commissioners other than and in addition to the Persons to be chosen or appointed as aforesaid, such Additional Commissioners shall be chosen by the Commissioners for General Purposes acting in the same District; for which Purpose the said Commissioners, being duly qualified as required by this Act shall, with the Consent of the major Part of them assembled at any Meeting to be held for that Purpose, set down in Writing Lists of the Names of such Persons residing within their respective Districts as shall in the Opinion of such Com-

missioners be fit and proper Persons to act as such Additional Commissioners, which Lists shall contain the Names of so many of those Persons as the said Commissioners shall in their Discretion, after taking into consideration the Size of each District, and the Number of Persons to be assessed therein, think requisite for the due Execution of this Act; which Lists, being respectively signed by such Commissioners, shall be a sufficient Authority for such Additional Commissioners being respectively qualified as herein-after is mentioned, and they are hereby authorized to take upon themselves the Execution of the several Powers of this Act according to the Provisions thereof: Provided always, that the Persons appointed to supply Vacancies in any District may be chosen and act as Additional Commissioners until their Services shall be required as Commissioners for General Purposes: Provided also, that no Person shall be capable of acting as such Additional Commissioner who shall not be seised or enfeolt or possessed of an Estate of the like

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J[^]ature, and of One Half the Value, herein required for the Estate of a Commissioner for General Purposes in the same District : Provided also, that where no Additional Commissioners shall be named and appointed in any District, the Commissioners appointed for General Purposes shall execute this Act in such District in all Matters and Things hereby authorized to be done by Additional Commissioners.

XVII. Provided always, and be it enacted. That if in any City, Liberty, Franchise, Cinque Port, Town, or Place, for which separate Commissioners have been appointed to act in execution of the said Land Tax Act, there shall not be found a sufficient Number of Persons, qualified as directed by this Act, and willing to act as Commissioners for General Purposes, or as Additional Commissioners, it shall be lawful to appoint, as such Commissioners or Additional Commissioners, any Persons residing in such City, Liberty, Franchise, Cinque Port, Town, or Place, who shall be liable to be assessed under the Provisions contained in this Act for annual Profits, however arising, to the Amount of Two hvmdred Pounds or upwards.

XVIII. And be it enacted. That whenever a new Appointment of Commissioners shall take place they shall execute this Act as well with respect to the Duties which shall not but which ought to have been assessed in any former Year, and with respect to Arrears of Duties assessed in any former Year under this Act, as to the Assessments to be made in such Year in which they shall be appointed, and shall have the like Powers to assess, levy, and collect such Duties and Arrears as they have to assess, levy, and collect the Duties assessed by them ; for all which Acts such Appointment shall be a sufficient Authority, subject to the Regulations of this Act.

XIX. And be it enacted. That whenever the said Commissioners for General Purposes shall have named such Additional

Commissioners as aforesaid, they shall cause Notice thereof in Writing, signed by Two or more of them, to be delivered to the said Additional Commissioners by the Assessors of the respective Parishes or Places where they reside, naming the Day and Place appointed by the Commissioners for General Purposes for the First Meeting of the said Additional Commissioners,

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and which Meeting shall be appointed to be held not later than Ten days after the Date of such Notice ; and the said respective Assessors shall, without Delay, cause the respective Persons so named to be summoned, by Notice in Writing, either given personally or left at their respective Places of Abode, to assemble, at the Time and Place mentioned in such Notice, for the Purpose of qualifying themselves to act in the Execution of the Powers vested in them by this Act ; and the said Commissioners for General Purposes shall administer the Oath to such Additional Commissioners required by this Act to be taken by them, and shall then and there appoint a Day for the said Additional Commissioners to bring in their Certificates of Assessment in the Manner herein directed ; and the Clerk to the Commissioners in each District, or his Assistant, shall also be appointed Clerk to the Additional Commissioners appointed for the same District, and shall attend the said Additional Commissioners at their Meetings as their Clerk.

XX. And be it enacted. That it shall be lawful for the Commissioners for General Purposes, whenever in their Judgment the same shall be requisite, to divide such Additional Commissioners into District Committees, and to allot to each Committee distinct Parishes, Wards, or Places in which such Committees shall separately act in the Execution of this Act, but- so that the Meetings of such Committee shall be appointed at such Times as that the Clerk to such Commissioners may attend every meeting: Provided always, that not more than Seven Persons shall act together as Additional Commissioners for the same District not being formed into several Divisions as aforesaid, nor any greater Number act together in the same Committee; and that where more than Seven Persons shall attend as such Additional Commissioners at. any Meeting, either for the Whole of any District or for any Division thereof, the Seven Persons first in their Order on the List signed by the Commissioners for General Purposes then present shall act, and the rest shall withdraw from such Meeting : Provided also, that not less than Two Additional Commissioners shall be competent to form any Meeting either for any District or Division thereof, and that any

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Two of them, or the major Part of them then present, shall be competent to do any Act authorized by this Act.

XXI. Provided always, and be it enacted. That if it shall appear to the Commissioners for General Purposes, whether they shall have been chosen as aforesaid or shall act by virtue of their Appointment of Commissioners for executing the said Land Tax Act, to be expedient that a greater Number than Seven Commissioners for General Purposes, possessing the Qualification required for such Commissioners, should be appointed for any District, instead of appointing Commissioners possessing only the Qualification required for Additional Commissioners as before mentioned, it shall be lawful for them to appoint such greater Number, not in any Case exceeding the Number of Seven, observing, with regard to such Appointments, the same Rules as in the first Appointment of Commissioners for General Purposes, but nevertheless without adding thereto any Persons to supply their Vacancies; and in every Case of appointing such increased Number of Commissioners for General Purposes it shall be lawful for the said Commissioners, at their First Meeting after such Appointment, and they are hereby required, to choose indifferently by Lot such Number of their own Body, not less than Two or more than Seven, to execute the Office vested in Additional Commissioners by this Act, and the Persons so chosen shall be Additional Commissioners for executing this Act and the Powers hereby vested in Additional Commissioners, and they are hereby required to execute this Act accordingly, and the remaining Commissioners, not so chosen by Lot, shall execute the Powers vested in the Commissioners for General Purposes ; provided also, that where no such Additional Commissioners shall have been appointed specially to execute the Powers vested in Additional Commissioners, the Commissioners acting in the Execution of the Powers of this Act, whether chosen as aforesaid or not, shall divide themselves in such manner that Two Commissioners at the least shall be appointed to execute the Powers vested in Additional Commissioners by this Act; and if in such Case there shall not be Two remaining Persons at least qualified to act as Commissioners for General Purposes in such District, then the Persons quali-

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fied to act in the Execution of the Powers of this Act as Commissioners for General Purposes in any adjoining District of the same County, Riding, Division, Shire, or Stewartry, or such Number of them as shall be requisite, shall execute this Act and the Powers hereby vested in Commissioners for General Purposes in and for such first-mentioned District.

XXII. And be it enacted. That the Commissioners for General Purposes shall execute this Act in all Matters and Things relating to the Duties in Schedules (A.) and (B.) of this Act, except such Allowances in respect thereof as are directed to be made in Number VI. of Schedule (A.) by other Commissioners for Special Purposes as herein-after mentioned, and also all Matters and Things relating to the Duties in Schedule (D.) of this Act, except in Cases where such Matters and Things are herein directed to be done by the said Commissioners for Special

Purposes, or by the Additional Commissioners, or Persons acting as such; and the said Commissioners for General Purposes shall also execute this Act in all Matters and Things relating to the Duties in Schedule (E.) not executed by the Commissioners authorized to be appointed for those Duties: Provided always, that nothing herein contained shall be construed to preclude any Person chosen a Commissioner for General Purposes from acting as such by reason of his acting or having acted as an Additional Commissioner, except only in the hearing and determining of Appeals against or relating to such particular Assessments, wherein he shall have made an Assessment as such Additional Commissioner.

XXIII. And be it enacted, That the Commissioners of Stamps and Taxes for the Time being, together with such Persons as shall be appointed Commissioners for Special Purposes as next herein-after mentioned, shall be Commissioners for the Special Purposes of this Act; and it shall be lawful for the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, by Warrant under their Hands and Seals, from Time to Time to appoint such and so many other Persons to be Commissioners for such Special Purposes as they respectively shall think expedient; which said Commissioners of Stamps and Taxes, and Commissioners so to

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be appointed as last aforesaid, without other Qualification being required than the Possession of their respective Offices, shall have full Authority to execute the several Powers given by this Act to Commissioners for Special Purposes, either in relation to the Allowances specified in Number VI. Schedule (A.) of this Act, or in relation to the special Exemptions granted from the Duties mentioned in Schedule (C.) of this Act, or to the charging and assessing the Profits arising from Annuities, Dividends, and Shares of Annuities paid in Great Britain out of the Revenues of any Foreign State, as herein mentioned, and also in relation to the examining, auditing, checking, and clearing the Books and Accounts of Dividends delivered to the Commissioners of Stamps and Taxes under the Authority of this Act; and shall also have full Authority to do any other Act, Matter, or Thing hereby directed or required to be done by Commissioners for Special Purposes; and all Powers, Provisions, Clauses, Matters, and Things contained in this Act for ascertaining the Amount of any Duty, Exemption, or Allowance mentioned in this Act shall be used, practised, and put in execution by the said Commissioners for Special Purposes in ascertaining the Amount of Duty or any Exemption or Allowance placed under their Cognizance or Jurisdiction : Provided always, that it shall not be lawful for the said Commissioners for Special Purposes (except when acting in the Execution of this Act in the Place of Commissioners for General Purposes, or on any Appeal in the Cases authorized by this Act), to summon any Person to be examined before them, but all Inquiries by or before the said Commissioners for Special Pur-

poses (except in the several Cases aforesaid) shall be answered by Affidavit, to be taken before One of the Commissioners for General Purposes in their respective Districts; and such Commissioners for Special Purposes shall have Authority to use, exercise, and apply all the Powers of this Act as effectually as any other Commissioners are hereby authorized to use, exercise, or apply the same, so far as the same Powers relate to the Jurisdiction given to the said Commissioners for Special Purposes ; and the said Commissioners for Special Purposes shall and may be allowed such Salary for their Pains and Trouble, and such

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incidental Expenees, as the said Commissioners of Her Majesty's Treasury shall direct to be paid to them : Provided always, that the said Commissioners of Her Majesty's Treasury shall cause an Account of all Appointments of Commissioners for Special Purposes with Salaries to be laid before each House of Parliament within Twenty Days after their Appointment respectively, if Parliament shall then be sitting, and if Parliament shall not be sitting then within Twenty Days after the next Meeting of Parliament.'

XXIV. And be it enacted, That the Governor and Directors of the Company of the Bank of England shall be Commissioners for executing this Act, for the Purpose of assessing and charging the Duties hereby granted in respect of all Annuities payable to the said Company at the Receipt of the Exchequer, and the Profits attached to the same and divided amongst the several Proprietors, and in respect of all Annuities, Dividends, and Shares of Annuities payable out of the Revenue of the United Kingdom to any Persons, Corporations, or Companies whatever, and which shall have been intrusted to the said Governor and Company for such Payment, and in respect of all other Annuities, Dividends, and Shares of Annuities which shall have been intrusted to the said Governor and Company for Payment as aforesaid, and in respect of all Profits and Gains of the said Company chargeable under Schedule (D.) of this Act, and in respect of all other Dividends, Annuities, Pensions, and Salaries payable by the said Company, and also in respect of all other Profits chargeable with Duty under this Act, and arising within any Ofiiee or Department under the Management or Control of the said Governor and Company ; and the said Commissioners shall have Authority to use, exercise, and apply all the Powers of this Act as fully and effectually as the Commissioners for the General Purposes of this Act are authorized to use, exercise, or apply the same, so far as the same relate to the said Duties to be assessed and charged by the said Governor and

9 The words : "And be it enacted, "of the United Kingdom of Great that"; "Commissioners of her Majes- Britain and Ireland," "under their ty's", or "said Commissioners of her hands and seals," are repealed by Majesty's", wherever they occur; 53 & 54 Vict., c. 51.

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Directors, and shall make their Assessments of the said Duties under and subject to the Rules, Regulations, and Exemptions contained in the several Schedules of this Act under which such Duties are respectively chargeable.

XXV. And be it enacted, That the Governor and Directors of the Company of the Bank of Ireland shall be Commissioners for executing this Act, and with the like Powers as aforesaid, for the Purpose of assessing and charging the Duties hereby granted in respect of all Annuities, Dividends, and Shares of Annuities payable by the Governor and Company of the Bank of Ireland, out of the public Revenue of the United Kingdom, to or for the Use or Benefit of any Persons not resident in Ireland and the said last-mentioned Commissioners shall make their Assessments of the said Duties, under and subject to the Rules, Regulations, and Exemptions contained in Schedule (C.) of this Act."

XXVI. And be it enacted. That the Governors and Directors of the South Sea Company shall be Commissioners for executing this Act, with the like Powers as aforesaid, for the Purpose of assessing and charging the Duties hereby granted in respect of all Annuities payable to the said Company at the Receipt of the Exchequer, and the Profits attached to the same and divided amongst the several Proprietors, and in respect of all Annuities, Dividends, and Shares of Annuities payable out of the Revenue of the United Kingdom to any Persons, Corporations, or Companies whatever, and which shall have been intrusted to the said Company for such Payment, and in respect of all other Dividends, Annuities, Pensions, and Salaries payable by the said Company, and also in respect of all other profits chargeable with Duty under this Act, and arising within any Office or Department under the Management or Control of the said Governors and Company ; and the said Commissioners shall make their Assessments of the said Duties under and subject to the Rules, Regulations, and Exemptions contained in the several Schedules of this Act under which such Duties are respectively chargeable."

10 This entire section is repealed H nid, by 37 & 38 Viet., e. 96.

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XXVII. And be it enacted, That the Directors of the East India Company shall be Commissioners for executing this Act, and with the like Powers as aforesaid, for the Purpose of assessing and charging the Duties hereby granted in respect of the Interest payable on the Bonds of the said Company, and in respect of all Dividends, Annuities, Pensions, and Salaries payable by the said Company, and also in respect of all other Profits and Gains chargeable with Duty under this Act, and arising within any Office or Department under the Management or Control of the said Company ; which Assessments shall be made under and subject to the Rules, Regulations, and Exemptions conLjined in the several Schedules under which the said Duties are respectively chargeable.

XXVIII. And be it enacted. That the Commissioners for the Reduction of the National Debt shall be Commissioners for executing this Act, and with the like Powers as aforesaid, for the Purpose of assessing and charging the Duties hereby granted in respect of all Annuities payable by them out of the Revenue of the United Kingdom, and in respect of all Salaries and Pensions payable in any Office or Department under their Management or Control; and the said Commissioners shall make their Assessments of the said Duties under and subject to the Rules, Regulations, and Exemptions contained in the several Schedules under which the said Duties are respectively chargeable.

XXIX. And be it enacted. That the said Commissioners for Special Purposes shall be Commissioners under the Regulations of this Act, and with the like Powers as aforesaid, for the Purpose of assessing and charging the Duties hereby made payable on all Dividends and Shares of Annuities payable out of the Revenue of any Foreign State to any Persons, Corporations, Companies, or Societies in Great Britain, which shall have been or shall be intrusted for such Payment to any Person, Corporation, Company, or Society whatever in Great Britain, other than and except the several Companies aforesaid, which Assessments shall be made under and subject to the Rules, Regulations, and Exemptions contained in Schedule (C.) of this Act.

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XXX. And for the ordering, raising, levying, and paying of the said Sums of Money hereby made payable on Offices and Employments of Profit, be it enacted. That the Lord High Chancellor, the Judges, and the principal Officer or Officers of each Court or public Department of Office under Her Majesty throughout Great Britain, whether the same shall be Civil, Judicial, or Criminal, Ecclesiastical or Commissary, Military or Naval, shall respectively have Authority to appoint Commissioners from and amongst the Officers of each Court or Department of Office respectively; and the Persons so appointed, or any Three or more of them, not in any Case exceeding Seven;

shall be Commissioners for executing this Act in relation to the Offices in each such Court or Department respectively : Provided always, that in relation to each Department of Office, not being One of Her Majesty's Courts, Civil, Judicial, or Criminal, or an Ecclesiastical or Commissary Court, the Commissioners of Her Majesty's Treasury shall, whenever they may think it expedient, settle and determine in what particular Departments Commissioners shall not be appointed, and in such Case shall settle and determine in what other Department of Office the Officers of that Department wherein Commissioners shall not be appointed shall be assessed; and also whenever there shall be any Default in the Officers of any Department, or in any Court aforesaid, in appointing Commissioners, the said Commissioners of Her Majesty's Treasury shall, within the Time herein limited, appoint fit and proper Persons to be Commissioners for executing this Act in the several Courts or Departments of Offices aforesaid for which they shall be appointed, from and amongst the Officers in the several Departments respectively, uniting for the Purposes of this Act, in Cases requiring the same, Two or more Offices under the same Commissioners, but nevertheless with distinct Officers from each Office so united for assessing and collecting the Duties, as directed by this Act; and where any Dispute shall arise touching the Department in which any Office is executed, the said Commissioners of Her Majesty's Treasury shall determine the same : Provided also, that where the Commissioners of one Department shall execute this Act in relation to any other Department, the

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Assessors and Collectors for such other Department shall be appointed from the Officers of such other Department, with all the Powers and Privileges appertaining to such Appointments : Provided also, that where no Appointment shall be made of Commissioners before the Expiration of the Time limited by this Act, the Commissioners for executing this Act in relation to the Duties on Lands and Tenements shall, on due Notice in the Manner herein directed, execute this Act in their several Districts in relation to the said Duties on Offices and Employments of Profit exercised within the same Districts respectively; and the Appointment of such Commissioners for Offices and Employments of Profit shall be notified to the Commissioners of Stamps and Taxes; and the Want of such Notification in due Time shall be deemed full Proof of Default in making such Appointment.

XXXI. And be it enacted. That the Speaker and the principal Clerk of either House of Parliament, the principal or other Officers in the several Counties Palatine, and the Duchy of Cornwallj or in any Ecclesiastical Court, or in any inferior Court of Justice, whether of Law or Equity, or Criminal or Justiciary, or under any Ecclesiastical Body or Corporation, whether Aggregate or Sole, throughout Great Britain, shall appoint Commissioners from and amongst the Persons executing Offices in either House of Parliament, or in their respective

Departments of Office; and the Persons so appointed, or any Three or more of them, not in any Case exceeding Seven, shall be Commissioners for executing this Act, in relation to the Places, Offices, and Employments of Profit in each House of Parliament, and in each such Department respectively; which Appointments shall be made, and the Names of the Commissioners shall be transmitted to the Commissioners of Stamps and Taxes within the Time herein limited, or in default thereof such Appointments shall be made by the Commissioners of Her Majesty's Treasury: Provided always, that where no such Appointment as last mentioned shall be made before the Expi-

18 The words: "and be it enacted, her Majest/lf ';' in^efs^? these last that"; "Commissioners of her Maj- two phrases occur; have been re- esty's", and "said Commissioners of pealed by 53 & 54 Vict., c 61.

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ration of the Time limited by tliis Act, the Commissioners for executing this Act in relation to the Duties on Lands and Tenements shall, in their several Districts, on due Notice of such Default in the Manner herein directed, also execute this Act in relation to the Duties on such Offices or Employments of Profit exercised within the same Districts respectively ; and the Want of Notification of any such Appointment to the Commissioners of Stamps and Taxes in due Time shall he deemed full Proof of Default in making such Appointment.*'

XXXIII. And be it enacted, That the Mayor, Aldermen, and Common Council, or the principal Officers or Members, by whatever Name they shall be called, of every Corporate City, Borough, Town, or Place, and of every Cinque Port, throughout Great Britain, or any Three or more of them, not in any Case exceeding Seven, shall be Commissioners for executing this Act, and the Powers herein contained, in relation to the public Offices or Employments of Profit in sTich City, Corporation, and Cinque Port, and in every Guild, Fraternity, Company, or Society, whether Corporate or not Corporate, within such City, Corporation, or Cinque Port; and that for all Offices or Employments of Profit (not being public Offices or Employments of Profit under Her Majesty) in any County, Eiding, Shire, Stewartry, City, Liberty, Franchise, Town, or Place, whether in the Appointment of the Lieutenant, Custos Eotulorum, or the Justices or Magistrates, or Commissioners for Aids or Taxes, or Sheriff of such County, Riding, Shire, Stewartry, City, Liberty, Franchise, Town, or Place, or of any Trustees or Guardians of any Trust or Fund in such County, Riding, Shire, Stewartry, City, Town, or Place, and for all Parochial Offices in such County, Riding, Shire, Stewartry, City, Town, or Place, (except Corporate Offices in Cities, Corporate Towns, Boroughs, or Places, or Offices in Cinque Ports, as aforesaid,) the Commissioners for executing this Act in relation to the Duties on Lands and Tenements shall, in their several Districts, also execute this Act in relation to the said Duties on Offices in such County, Riding, Shire, Stewartry,

City, Liberty, or Place ; and such respective Commissioners shall and may exercise any of the Powers con-

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tained in this Act, in relation to any of the Duties herein mentioned, for causing due Returns to be made from the respective Officers within their respective Jurisdictions, and for compelling the Assessors to make their Assessments, and return the same, and for the due Collection of and accounting for the said Duties, and may act therein in all respects as fully and effectually as any other Commissioners are hereby empowered to act in relation to the said other Duties; provided the Monies collected of the said Duties under the respective Commissioners acting for such Offices in Corporate Cities, Boroughs, Towns, or Places aforesaid, or in the Cinque Ports, or in the several Counties, Ridings, Divisions, Shires, Stewartries, Cities, Liberties, Franchises, Towns, and Places, shall be paid to the proper Officer for Receipt for the County, Riding, Shire, or Stewartry, and not otherwise, and that the like Duplicates shall be delivered of such last-mentioned Duties as in other Cases where the same are directed to be paid in like Manner."

XXXVIII. And be it enacted. That the Appointment of Commissioners for executing this Act in relation to the Duties on Offices and Employments of Profit as aforesaid shall be notified to the Commissioners of Stamps and Taxes, within One Calendar Month after the passing of this Act, with respect to the First Assessment under the same, and within One Calendar Month after the Fifth Day of April in any future Year ; and in default thereof the Appointment of such Commissioners shall devolve on the Commissioners of Her Majesty's Treasury, and on the Commissioners of the District, in succession as aforesaid : Provided always, that such Appointment by the Commissioners of Her Majesty's Treasury shall take place within One Calendar Month after the Notification of such Default as aforesaid from the Commissioners of Stamps and Taxes; and in case of no Appointment as last aforesaid, notified to the Commissioners of Stamps and Taxes in like Manner, the Execution

18 The introductory words "And be repealed by 53 & 54 Vict., c. 51. The it enacted, that"; the word "that", whole section was repealed by 39 where it refers to such introductory & 40 Vict., c. 16; but revived by words; and the words "shire, stew- 40 & 41 Vict., c. 13, §§ 7, 27 of the artry", or "shires, stewartries", latter Act is repealed by 46 & 47 wherever they occur; have been re- Vict., c. 39.

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of this Act shall devolve on the Coinmissioners appointed for the District in relation to the Duties on Lands, Tenements, and Hereditaments; and every such Appointment shall be until other Commissioners shall be appointed, and may be renewed annually on or before the Fifth Day of April in each Year during the Continuance of this act: Provided always, that the Commissioners so to be appointed may continue to act from Year to Year, so long as they are respectively willing to act, without any new Appointment, unless it shall be deemed expedient under the Powers of this Act that any Department for which Commissioners have been appointed should be assessed under the Commissioners of any other Department.

XXXIV. And be it enacted, That for the better Execution of this Act, so far as the same relates to the Duties hereby granted on Pensions or Stipends payable by Her Majesty, or out of the public Eeveiue, contained in Schedule (E.), and for the ordering, raising, levying, and paying of the Duties hereby made payable thereon, in Cases not otherwise provided for by this Act, the Paymasters of Civil Services, and such other Persons as the Commissioners of Her Majesty's Treasury shall appoint, shall be Commissioners for executing this Act, and all the Powers herein contained, in relation to the said last-mentioned Duties, or shall respectively appoint Commissioners from and amongst the Officers of those Departments for such Purposes.

XXXV. And be it enacted, That every Person acting as a Commissioner as aforesaid in the Execution of this Act shall on Kequest be entitled unto a Certificate thereof under the Hands of the Commissioners of Stamps and Taxes, which Certificate shall continue in force so long only as such Person shall continue to act as such Commissioner, and shall be revokable by the Commissioners of Her Majesty's Treasury, by any Instrument in Writing, under their Hands, when it shall appear to them that such Person hath neglected to perform his Duty as such Commissioner; and the Person to whom such Certificate shall have, been granted shall, during the Continuance thereof in force, be discharged of and from all Parish and Ward Offices within, the parish or Ward wherein such Person

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shall dwell, and from serving on Juries in the County wherein such Person shall dwell, which said Certificate shall be enrolled by the Clerk of the Peace of the County or City in which the same shall be granted, for which Enrolment the said Clerk of the Peace shall have for his Fee the Sum of One Shilling, and no more; and the said Clerk of the Peace shall cause every Certificate revoked in manner aforesaid to be taken off the Roll on Notice thereof to be given to him by the Commissioners of Stamps and Taxes."

XXXVI. And be it enacted, That in England the Commissioners for General Purposes may appoint Assessors and Collectors for the Duties granted by this Act in like Manner as Assessors and Collectors may be appointed under the said Acts relating to the Duties of Assessed Taxes; and in Scotland the said Commissioners for General Purposes may in like Manner appoint Assessors for the said Duties hereby granted; and the same Persons who now are or may be appointed Collectors or Officers for collecting and receiving the Land Tax and Assessed Taxes in Scotland under the Authority of the Act in that Behalf made, and none other, shall be Collectors and Receivers of the Duties granted by this Act.

XXXVII. And be it enacted, That the Officers for Receipt of the Land Tax and Assessed Taxes appointed or to be appointed by the Commissioners of Her Majesty's Treasury, or by the Commissioners of Stamps and Taxes, and the Inspectors and Surveyors appointed or to be appointed in like Manner for the Duties of Assessed Taxes, shall be respectively Officers for Receipt and Inspectors and Surveyors of the Duties granted by this Act ; and the said Commissioners for General Purposes, and the said Additional Commissioners acting in the Execution of this Act, and the said Assessors and Collectors, to be appointed as herein mentioned, and the said Officers for Receipt and Inspectors and Surveyors respectively, shall be and they are hereby respectively empowered and required to do all Things

1* The words : "And be It enacted, wherein such person shall dwell" ; that"; "Commissioners of her Maj- have been repealed by 53 & 54 esty's"; "under their hands"; "and Vict., c. 51; 37 & 38 Vict., c. 96. from serving on juries in the county

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necessary for putting this Act in execution, with relation to the said Duties hereby granted, in the like and in as full and ample a Manner as any Commissioners, Assessors, Collectors, OfBeers for Receipt, Surveyors, or Inspectors are authorized to put in execution the said Acts relating to the said Duties of Assessed Taxes, or any Matter or Thing therein contained, as well with respect to all Acts, Matters, and Things to be done by, under, or before the said Additional CommissioneJ's, or by, under, or before the Commissioners for General Purposes in their respective Districts or Departments, as by, under, and before the said Commissioners for Special Purposes.

XXXVIII. And be it enacted. That every Person appointed a Commissioner either for General or Special Purposes, or an Additional Commissioner, or an Assessor or Collector, or a Clerk or Clerk's Assistant to the said respective Commissioners, and every Inspector, Surveyor, and Officer for Receipt, shall, before he shall begin to act in the Execution of this Act, so

far as relates to the Duties contained in Schedule (D.), take the Oath prescribed by this Act, and contained in the Schedule marked (F.) applicable to such Officers respectively; which Oath any One of the Persons appointed a Commissioner, either for General or Special Purposes as aforesaid, or an Additional Commissioner, is hereby authorized to administer, (except that every such Oath so to be administered to any Commissioner for General or Special Purposes as aforesaid, or to an Additional Commissioner, shall be administered by a Commissioner for such General or Special Purposes, and not otherwise,) and which Oath so taken shall be subscribed by the Party taking the same; and if any Person shall act as a Commissioner in relation to the Duties in Schedule (D.), except in administering the Oath herein mentioned, or shall act as a Clerk or Clerk's Assistant, or an Assessor, Collector, Inspector, Surveyor, or Officer for Receipt, in relation to the Duties contained in the said Schedule (D.), before he shall have taken the Oath herein required to be taken by such Officer respectively, he shall forfeit the Sum of One hundred Pounds.

XXXIX. And be it enacted. That any Subject of Her Majesty whose ordinary Residence shall have been in Great Britain,

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and who shall have departed from Great Britain and gone into any Parts beyond the Seas, for the Purpose only of Occasional Residence, at the Time of the Execution of this Act, shall be deemed, notwithstanding such temporary Absence, a Person chargeable to the Duties granted by this Act as a Person actually residing in Great Britain, and shall be assessed and charged accordingly (in manner herein-after directed) upon the whole Amount of his Profits or Gains, whether the same shall arise from Property in Great Britain or elsewhere, or from any Allowance, Annuity, or Stipend, (except as herein is excepted,) or from any Profession, Employment, Trade, or Vocation, in Great Britain or elsewhere: Provided always, that no Person who shall on or after the passing of this Act actually be in Great Britain for some temporary Purpose only, and not with any View or Intent of establishing his Residence therein, and who shall not actually have resided in Great Britain at one Time or several Times for a Period equal in the whole to Six Months in any One Tear, shall be charged with the said Duties mentioned in Schedule (D.) as a Person residing in Great Britain, in respect of the Profits or Gains received from or out of any Possessions in Ireland, or any other of Her Majesty's Dominions, or any Foreign Possessions, or from Securities in Ireland, or any other of Her Majesty's Dominions, or Foreign Securities ; but nevertheless every such Person shall, after such Residence in Great Britain for such Space of Time as aforesaid, be chargeable to the said Duties for the Year commencing on the Sixth Day of April preceding: Provided also, that any Person who shall depart from Great Britain after claiming such Exemption, and shall again return to Great Britain on or before the Fifth Day of April next after such

Claim made, shall be chargeable to the said Duties as a Person residing in Great Britain for the whole of the Year in which such Claim shall have been made.

XL. And be it enacted, That all Bodies Politic, Corporate, or Collegiate, Companies, Fraternities, Fellowships, or Societies of Persons, whether Corporate or not Corporate, shall be chargeable with such and the like Duties as any Person will under and by virtue of this Act be chargeable with, and that

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the Chamberlain or other Officer acting as Treasurer, Auditor, or Receiver for the Time being of every such Corporation, Company, Fraternity, Fellowship, or Society shall be answerable for doing all such Acts, Matters, and Things as shall be required to be done by virtue of this Act, in order to the assessing such Bodies Corporate, Companies, Fraternities, Fellowships, or Societies to the Duties granted by this Act, and paying the same.

XLI. And be it enacted. That the Trustee, Guardian, Tutor, Curator, or Committee of any Person, being an Infant, or Married Woman, Lunatic, Idiot, or Insane, and having the Direction, Control, or Management of the Property or Concern of such Infant, Married Woman, Lunatic, Idiot, or insane Person, whether such Infant, Married Woman, Lunatic, Idiot, or insane Person shall reside in Great Britain or not, shall be chargeable to the said Duties in like Manner and to the same Amount as would be charged if such Infant were of full Age, or such Married Woman Tvere sole, or such Lunatic, Idiot, or insane Person were capable of acting for himself ; and any Person not resident in Great Britain, whether a Subject of Her Majesty or not, shall be chargeable in the Name of such Trustee, Guardian, Tutor, Curator, or Committee, or of any Factor, Agent, or Receiver, having the Receipt of any Profits or Gains arising as herein mentioned, and belonging to such Person, in the like Manner and to the like Amount as would be charged if such Person were resident in Great Britain, and in the actual Receipt thereof; and every such Trustee, Guardian, Tutor, Curator, Committee, Agent, or Receiver shall be answerable for the doing of all such Acts, Matters, and Things as shall be required to be done by virtue of this Act in order to the assessing of any such Person to the Duties granted by this Act, and paying the same.

XLIII. Provided always, and be it enacted. That no Trustee who shall have authorized the Receipt of the Profits arising from Trust Property by the Person entitled thereunto, or by the Agent of such last-mentioned Person, and which Person shall actually receive the same under such Authority, nor any Agent or Receiver of any Person being of full Age, and resident

in Greed Britain, (other than a Married Womaii, Lunatic, Idiot, and insane Person,) who shall return a List in the Manner herein-after required of the JStame and Eesidence of such Person, shall be required to do any other Act for the Purpose of assessing such Person, unless the Commissioners acting in the Execution of this Act in respect of the Assessment to be made on such Person shall require the Testimony of such Trustee, Agent, or Receiver in pursuance of the Powers and Authorities by this Act given.

XLIII. And be it enacted, That the Receiver appointed by the Court of Chancery, or by any other Court in Great Britain, having the Direction and Control of any Property in respect whereof a Duty is charged by this Act, whether the Title to such Property shall be uncertain or not, or subject to any Contingency or not, or be depending or be not ascertained by reason of any Dispute or other Cause, shall be chargeable to the said Duties in like Manner and to the like Amount as would be charged if the said Property was not under the Direction and Control of such Court, and the Title thereto was certain, and not subject to any Contingency whatever; and every such Receiver shall be answerable for doing all such Matters and Things as shall be required to be done by virtue of this Act, in order to the assessing of the Duties granted by this Act, and paying the same.

XLIV. And be it enacted. That where any Person, being Trustee, Agent, Factor, or Receiver, Guardian, Tutor, Curator, or Committee of or for any Person, shall be assessed under this Act in respect of such Person, or where any Chamberlain, Treasurer, Clerk, or other Officer of any Corporation, Company, Fraternity, or Society shall be so assessed in respect of such Corporation, Company, Fraternity, or Society as aforesaid, it shall be lawful for every such Person who shall be so assessed, by and out of the Money which shall come to his Hands as such Trustee, Agent, Factor, or Receiver, Guardian, Tutor, Committee, or Curator as aforesaid, or as such Chamberlain, Treasurer, Clerk, or other Officer, to retain so much and such Part thereof from Time to Time as shall be sufficient to pay such Assessment; and every such Trustee, Agent, Fac-

tor, or Receiver, Guardian, Tutor, Committee, or Curator, Chamberlain, Treasurer, Clerk, or other Officer, shall be and is hereby indemnified against every Person, Corporation, Company, Fraternity, or Society "whatsoever, for all Payments which

he shall make in pursuance and by virtue of this Act.

XLV. And be it enacted. That any Married Woman acting as a sole Trader by the Custom of any City or Place, or otherwise, or having or being entitled to any Property or Profits to her sole or separate Use, shall be chargeable to such and the like Duties, and in like Manner, except as herein-after is mentioned, as if she were actually sole and unmarried: Provided always, that the Profits of any Married Woman living with her Husband shall be deemed the Profits of the Husband, and the same shall be charged in the Name of the Husband, and not in her Name, or of her Trustee: Provided also, that any Married Woman living in Great Britain separate from her Husband, whether such Husband shall be temporarily absent from her or from Great Britain, or otherwise, who shall receive any Allowance or Remittance from Property out of Great Britain, shall be charged as a Feme Sole if entitled thereto in her own Right, and as the Agent of the Husband if she receive the same from or through him, or from his Property or on his Credit.

XL VI. And be it enacted, That for the ordering, raising, and levying the said Duties the respective Commissioners for General Purposes at the First Meeting to be held under this Act, or at a Meeting to be appointed for that Purpose, shall direct their Precepts to such Persons as shall have been appointed Assessors for the Execution of this Act, or in case no such Appointment shall have been made, then to the Assessors for the Land Tax or the Duties of Assessed Taxes in their respective Districts, requiring them to appear before the said Commissioners at such Time and Place as they shall appoint; and on the Appearance of such Assessors the said Commissioners shall administer to them the Oath required by this Act to be taken by them, and issue to them their Warrants of Appointment as Assessors in the Execution of this Act, signed by such Commissioners, together with such Instructions duly filled

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up as shall be necessary for carrying this Act into execution; and the said Assessors shall duly serve and deliver, in the respective Parishes or Places for which they may be appointed, as well the Notices herein-after particularly directed to be served by them, as also all other Notices and Precepts, by whomsoever signed, which are or may be directed or required to be given by or in pursuance of this Act; and the said Assessors shall duly verify the Service of all such Notices and Precepts,

XLVIII. And be it enacted. That the Assessors to be appointed to execute this Act shall, within the Time and in the Manner directed by the Precept of the Commissioners for General Purposes, cause general Notices to be affixed on or near to the Door of the Church or Chapel and Market House or Cross (if any) of the City, Town, Parish, or Place for which such Assessors act; and if such City, Town, Parish, or Place

shall not have a Church or Chapel, or Market House or Cross, then on the Church or Chapel nearest to such City, Town, Parish, or Place, requiring all Persons who are by this Act required to make out and deliver any List, Declaration, or Statement to make out and deliver to the respective Assessors or Commissioners, or to their Clerk, at their respective Offices to be described in such Notice, and as therein directed, all such Lists, Declarations, and Statements accordingly, within such Time as shall be limited by such Precept, and which shall not in any Case be later than Twenty-one Days from the Date of such Precept; and such general Notices shall, when the same shall be affixed as aforesaid, be deemed sufficient Notice to all Persons resident in such City, Town, Parish, or Place, and the affixing of the same in manner aforesaid shall be deemed good Service of such Notice ; and the said respective Assessors shall cause the said Notices to be from Time to Time replaced, if necessary, for the Space of Ten Days before the Time required for the Delivery of such Lists, Declarations, and Statements as aforesaid ; and every Person wilfully tearing, defacing, or obliterating any such Notice so affixed shall forfeit any Sum not exceeding Twenty Pounds.

XL VIII. Provided always, and be it enacted. That the said Assessors shall, within the Time directed by the Precept of

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the said Commissioners, give Notice to every Person chargeable to the said Duties in respect of any Property or Profits situate or arising within the Limits of the said Places where such Assessors shall act, or leave such Notice at his Dwelling House or Place of Residence, or on the Premises to be charged by such Assessment within such Limits, requiring every such Person to prepare and deliver, in manner directed by this Act, all such Lists, Declarations, and Statements as they are respectively required to do by this Act, within such Time as shall be limited by such Precept; and if any Person residing within any Parish or Place at the Time such general Notice as aforesaid shall be given, or to whom such Notice shall be personally given, or at whose Dwelling House or Place of Residence the same shall be left, or if any Person occupying any Property or engaged in any Concern within such Limits, on whom such Notice shall be served in manner aforesaid, or for whom such Notice shall be left on the Premises to be charged as aforesaid, after Notice thereof, shall refuse or neglect to make out such Lists, Declarations, or Statements as may be applicable to such Person, and as the Case may require, and deliver the same in manner directed by this Act, within the Time limited in such Notice, then such Commissioners shall forthwith issue a Summons under their Hands to such Person making default as aforesaid, in order that the Penalty for such Refusal or Neglect may be duly levied ; and the said Commissioners shall moreover proceed to assess or cause to be assessed every Person making such Default in the Manner herein directed.

XLIX. And be it enacted. That every such List, Declaration, or Statement of the Profits to be charged as aforesaid shall be delivered to the Assessor of the same Parish or Place, except Statements containing the Amount of Profits chargeable under Schedule (D.) of this Act, in such Cases where the Commissioners acting for such Parish or Place shall have caused to be inserted in the Notice that an Office is opened for the Receipt of Statements of Profits, and a proper Person appointed to receive the same, and the Time and Place of Attendance, in which Cases the Delivery of such Statements to be charged

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Tinder the said Schedule (D.) shall be made at such Office to the Person there appointed to receive the same: Provided always, that in Cases where the Parties to be charged under the said Schedule (D.) shall give ISTotice of their Desire to be assessed for the said Duties by the Commissioners for Special Purposes, such Statements of Profits chargeable under the said Schedule (D.) shall be delivered, together with such Notice, to such Assessor as aforesaid, to be by him transmitted to the Inspector or Surveyor of the District.

L. And be it enacted, That every Person, when required so to do by any Notice given in pursuance of this Act, shall, within the Period to be mentioned in such Notice, prepare and deliver to the Assessor of the Parish or Place where such Person shall reside a List in Writing, containing to the best of his Belief the proper Name of every Lodger or Inmate resident in his Dwelling House, and of other Persons chiefly employed in his Service, whether resident in such Dwelling House or not, and the Place of Residence of such of them as are not resident in such Dwelling House, and also of any such Lodger or Inmate who shall have any ordinary Place of Residence elsewhere at which he is entitled, under the Regulations of this Act, to be assessed, who shall be desirous of being so assessed at such Place of ordinary Residence; which Lists shall be signed by the respective Parties delivering the same, and shall severally be made out in such Form as shall be directed under the Authority of this Act : Provided always, that no Person required by this Act to deliver a List of Lodgers, Inmates, or other Persons aforesaid shall be liable to the Penalties herein-after mentioned, or either of them, for any Omission of the Name or Residence of any Person in his Service or Employ, and not resident in his Dwelling House, if it shall appear to the Commissioners for executing this Act, on Inquiry before them, that such Person is entitled to be exempted from the Payment of all and every the Duties hereby granted.

LI. And be it enacted. That every Person who shall be in the Receipt of any Money or Value, or the Profits or Gains arising from any of the Sources mentioned in this Act, of or belonging to any other Person, in whatever Character the same

shall be received, for which such other Person is chargeable under the Regulations of this Act, or would be so chargeable if he were resident in Great Britain, shall within the like Period prepare and deliver, in manner before directed, a List in Writing, in such Form as this Act requires, signed by him, containing a true and correct Statement of all such Money, Value, Profits, or Gains, and the Name and Place of Abode of every Person to whom the same shall belong, together with a Declaration whether such Person is of full Age, or a Married Woman living with her Husband, or a Married Woman for whose Payment of the Duty hereby charged on her the Husband is not accountable by this Act, or resident in Great Britain, or an Infant, Idiot, Lunatic, or insane Person, in order that such Person, according to a Statement, to be delivered as herein mentioned, may be charged either in the Name of the Person delivering such List, if the same shall be so chargeable, or in the Name of the Person to whom such Property shall belong, if of full Age, and resident in Great Britain, and the same be so chargeable by this Act; and every Person acting in such Character jointly with any other Person shall deliver a List of the Names and Places of Abode of every Person joined with him at the Time of delivering such List, and to the Same Person to whom such List shall be delivered.

LIII. And be it enacted. That every Person chargeable under this Act shall, when required so to do, whether by any general or particular Notice given in pursuance of this Act, within the Period to be mentioned in such Notice as aforesaid, prepare and deliver to the Person appointed to receive the same, and to whom the same ought to be delivered, a true and correct Statement in Writing, in such Form as this Act requires, and signed by the Person delivering the same, containing the annual Value of all Lands and Tenements in his Occupation, whether the same be situate in One or more Parish or Parishes, and the Amount of the Profits or Gains arising to such Person from, all and every the Sources chargeable under this Act, according to the respective Schedules thereof, which Amount shall be estimated for the Period and according to the respective Rules contained in the respective Schedules of this Act to which

Statement shall be added a Declaration, that the same is estimated on all the Sources contained in the said several Schedules, describing the same, after setting against or deducting from such Profits or Gains such Sums, and no other, as are allowed by this Act; and every such Statement shall be made exclusive of the Profits and Gains accrued or accruing from Interest of Money, or other annual Payment arising out of the Property of any other Person, for which such other Person ought to be charged by virtue of this Act.

LIII. And be it enacted. That every Person who shall act in any Character as aforesaid for any other Person, who by reason of any such Incapacity as aforesaid, or by reason of his not being resident in Great Britain^ cannot be personally charged by virtue of this Act, shall also, within the like Period, deliver to the Person appointed to receive the same under this Act, and to whom the same ought to be delivered, and in the same District in which the Person delivering such List ought to be charged on his own Account, a true and correct Statement in Writing, signed by him, and to be made in such Form as this Act requires, of the Amount of the Profits and Gains to be charged on him on account of such other Person, estimated during the Period and according to the Rules contained in the said respective Schedules, together with such Declaration of the Manner of estimating the same as aforesaid: Provided always, that where Two or more such Persons shall be liable to be charged for the same Person, One Eeturn only shall be required, and such Keturn shall be made by them jointly, or by One or more of them on behalf of himself or themselves and the rest of the Persons so liable, and it shall be lawful for them to give Notice in Writing to the Commissioners acting in each District where they shall be called upon for such Statement, in what Parish or Place, or Parishes or Places, they are respectively chargeable by this Act on their own Account, and in which of the said Parishes or Places they are desirous of being so charged on the Behalf of such other Person for whom tley so act in any of the Characters before mentioned, and they shall be assessed accordingly by One Assessment in such Parish or Place, provided any One of such Persons shall be liable to be

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charged on his own Account in such Parish or Place; and if more than One Assessment shall be made on such Persons, or any of them, on the same Account, Eelief shall be granted from such Double Assessment by like Applications to the Commissioners as are allowed in other Cases by this Act.

LIV. And be it enacted, That every such Officer before described of any Corporation, Fraternity, Fellowship, Company, or Society shall also, within the like Period, prepare and deliver in like Form and Manner a true and correct Statement of the Profits and Gains to be charged on such Corporation, Fraternity, Fellowship, Company, or Society, computed according to the Directions of this Act, together with such Declaration of the Manner of estimating the same as aforesaid; and such Estimate shall be made on the Amount of the annual Profits and Gains of such Corporation, Fraternity, Fellowship, Company, or Society before any Dividend shall have been made thereof to any other Persons, Corporations, or Companies having any Share, Right, or Title in or to such Profits or Gains; and all such other Persons, and Corporations or Companies, shall allow out of such Dividends a proportionate Deduction in respect of the Duty so charged: Provided always, that nothing

herein-before contained shall be construed to require in such Statement the Inclusion of Salaries, Wages, or Profits of any Officer of such Corporation, Fraternity, Fellowship, Company, or Society, otherwise chargeable under this Act : Provided also, that the Statements of the several Companies of the E(ist India and South Sea shall be made exclusive of the Dividends and the Profits attached thereto, and to be divided amongst the Proprietors of the respective Stocks belonging to such Companies.^'

LV. And be it enacted. That if any Person who ought by this Act to deliver any List, Declaration, or Statement as aforesaid shall refuse or neglect so to do within the Time limited in such Notice, or shall under any Pretence wilfully delay the Delivery thereof, and if Information thereof shall be given,

IS The last clause, namely, that beginning "Provided also", has been repealed by 37 & 38 Vict., c. 96.

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and the Proceedings thereupon shall be had, before the Commissioners acting in the Execution of this Act, every such Person shall forfeit any Sum not exceeding Twenty Pounds, and Treble the Duty at which such Person ought to be charged by virtue of this Act, such Penalty to be recovered as any Penalty contained in this Act is by Law recoverable, and the increased Duty to be added to the Assessment, but, nevertheless, subject to such Stay of Prosecution or other Proceedings by a subsequent Delivery of such List, Declaration, or Statement in the Case following; (that is to say,) if any Trustee, Agent, or Receiver, or other Person hereby required to deliver such List, Declaration, or Statement on behalf of any other Person, shall deliver an imperfect List, Declaration, or Statement, declaring himself unable to give a more perfect List, Declaration, or Statement, with the Reasons for such Inability, and the said Commissioners shall be satisfied therewith, the said Trustee, Agent, or Receiver, or other Person as aforesaid, shall not be liable to such Penalty in case the Commissioners shall grant further Time for the Delivery thereof; and such Trustee, Agent, Receiver, or other Person shall, within the Time so granted, deliver a List, Declaration, or Schedule, as perfect as the Nature of the Case will enable him to prepare and deliver; and every Person who shall be prosecuted for any such Offence by Action or Information in any of Her Majesty's Courts, and who shall not have been assessed in Treble the Duty as aforesaid, shall forfeit the Sum of Fifty Pounds.

LVI. Provided always, and be it enacted, That no Person to or on whom the Assessor shall not have delivered or served a particular]^otice as aforesaid shall be liable to the Penalties before mentioned, or either of them, for not delivering such Statement as before required, if it shall appear to the Commissioners for executing this Act, on Inquiry before them, that such Person is entitled to be exempted from the Payment of all

and every the Duties hereby granted.

LVII. And be it enacted. That the Assessor shall make out an Alphabetical List, and deliver the same to the Inspector or Surveyor of the District, containing the Names of all Persons to or on whom such Notices have been delivered or served in

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pursuance of this Act, and the Names of all Persons having Property or Profits chargeable under this Act, within the Limits of such Assessor, distinguishing the Persons who have duly made their Returns, and the Persons who have omitted to make such Returns, and the Persons who have given Notice to be assessed by the Commissioners for Special Purposes, and also the Persons who shall have been returned as Lodgers or Inmates within such Limits, or as chargeable within but having a Residence out of such Limits; and if such Assessor shall have neglected to give Notice to any Person to whom the same ought to be delivered, the Inspector or Surveyor may at any Time afterwards cause such Notice to be delivered to or served on such Person, and may also from Time to Time cause the like Notice to be delivered to or served on any Person coming to reside in any Parish or Place after the Expiration of such Notices.

LVIII. And be it enacted. That the Assessor for every Parish or Place shall personally appear before the said Commissioners at such Meeting as the said Assessor shall be appointed to attend, and shall then and there make Oath before the said Commissioners that the several Notices required to be delivered to Householders and Occupiers, and also to Lodgers and Inmates, by this Act, have been duly served in the Manner required by this Act, to the best of his Knowledge, and that general Notices to the Effect mentioned in this Act have been duly affixed, in the Manner hereby required, on such proper Places within the City, Town, or Place for which such Assessor shall act, as by this Act is required, and that the List delivered by him to the Inspector or Surveyor contains the Name of every Person to or on whom such Notices ought to be delivered or served according to the Directions of this Act, within the Knowledge of such Assessor; and every Assessor who shall neglect to appear before such Commissioners, or refuse to make such Oath, or who shall have omitted or neglected to return to such Inspector or Surveyor the Name of any Person whose Name ought to be included in any such List as by this Act is required, shall forfeit any Sum not exceeding Twenty Pounds.

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LIX. And be it enacted, That the Clerks to the said respective Commissioners shall with all convenient Speed abstract

the Returns of Statements delivered to such Commissioners by the Assessors, or at their Office by the respective Parties, into Books to be provided for that Purpose, and according to such Forms as shall be transmitted to them from the Head Office for Stamps and Taxes, such Abstracts to contain the Names of the Persons making such Returns, and the several Amounts of Profits returned by them respectively, to be laid before and delivered to the said Commissioners; and all such Returns shall be numbered and filed in the Office of the said Commissioners, and carefully kept so long as the Accounts of the said Duties for such District, or any Part thereof, shall remain unpaid to Her Majesty; to all which Books any Inspector or Surveyor who shall have taken the Oath herein prescribed before the Commissioners acting for the same Districts respectively shall have free Access at all seasonable Times, and shall take such Copies thereof, or of such Parts thereof, or Extracts from the same, as he shall deem necessary in order to the due Execution of this Act.

LX. And be it enacted. That the Duties hereby granted and contained in the said Schedule marked (A.) shall be assessed and charged under the following Rules, which Rules shall be deemed and construed to be a Part of this Act, and to refer to the said Duties, as if the same had been inserted under a special Enactment,

Schedule (A.)

No. I. — General Rule for estimating Lands, Tenements, Hereditaments, or Heritages mentioned in Schedule (A.)

The annual "Value of Lands, Tenements, Hereditaments, or Heritages charged under Schedule (A.) shall be understood to be the Rent by the Year at which the same are let at Rack Rent, if the Amount of such Rent shall have been fixed by Agreement commencing within the Period of Seven Years preceding the Fifth Day of April next before the Time of making

the Assessment, but if the same are not so let at Rack Rent, Foster Income Tax. — 61.

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then at the Rack Rent at which the same shall be let by the Year; which Rule shall be construed to extend to all Lands, Tenements, and Hereditaments, or Heritages, capable of actual Occupation, of whatever Nature, and for whatever Purpose occupied or enjoyed, and of whatever Value, except the Properties mentioned in No. II. and No. III. of this Schedule.

No. II. — Rules for estimating the Lands, Tenements, Hereditaments, or Heritages herein mentioned which are not to be charged according to the preceding General Rule.

The annual Value of all the Properties herein-after described

shall be understood to be the full Amount for One Year, or the average Amount for One Year, of the Profits received therefrom within the respective Times herein limited:

First. — Of all Tithes, if taken in Kind, on an Average of the Three preceding Years:

Second. — Of all Dues and Money Payments in right of the Church or by Endowment, or in lieu of Tithes (not being Tithes arising from Lands), and of all Teinds in Scotland, on the like Average :

Third. — Of all Tithes arising from Lands, if compounded for, and of all Rents and other Money Payments in lieu of Tithes arising from Lands (except Rent-charges confirmed under the Act passed for the Commutation of Tithes), on the Amount of such Composition, Rent, or Payment for One Year preceding :

The said Duty in each Case to be charged on the Person entitled to such Tithes or Payments, or his Lessee or Tenant, Agent or Factor, except in the Cases mentioned in the Fourth Rule of No. IV. of Schedule (A.) :

Fourth. — Of Manors and other Royalties, including all Dues and other Services, or other casual Profits, (not being Rents or other annual Payments reserved or charged,) on an Average of the Seven preceding Years, to be charged on the Lord of such Manor or Royalty, or Person renting the same :

Fifth. — Of all Fines received in consideration of any Demise of Lands or Tenements (not being Parcel of a Manor or Royalty

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demisable by the Custom thereof) on the Amount so received within the Year preceding by or on account of the Party ; provided that in case the Party chargeable shall prove, to the Satisfaction of the Commissioners for General Purposes in the District, that such Fines, or any Part thereof, have been applied as productive Capital, on which a Profit has arisen or will arise otherwise chargeable under this Act, for the Year in which the Assessment shall be made, it shall be lawful for the said Commissioners to discharge the Amount so applied from the Profits liable to Assessment under this Rule:

Sixth. — Of all other Profits arising from Lands, Tenements, Hereditaments, or Heritages not in the actual Possession or Occupation of the Party to be charged, and not before enumerated, on a fair and just Average of such Number of Years as the said Commissioners shall, on the Statement of the Party to be charged, judge proper, (except such Profits as may be liable to Deduction in pursuance of the Eleventh or Tenth Rule in Number IV. herein-after mentioned,) to be charged on the Receivers of such Profits, or the Persons entitled thereto.

No. III. — Rules for estimating the Lands, Tenements, Hereditaments, or Heritages herein-after mentioned which are not to be charged according to the preceding General Rule.

The annual "Value of all the Properties herein-after described shall be understood to be the full Amount for One Year, or the Average Amount for One Year, of the Profits received therefrom within the respective Times herein limited.

First.— — Of Quarries of Stone, Slate, Limestone, or Chalk, on the Amount of Profits in the preceding Year :

Second. — Of Mines of Coal, Tin, Lead, Copper, Mundic, Iron, and other Mines, on an Average of the Five preceding Years, subject to the Provisions concerning Mines contained in this Act:

Third. — Of Iron Works,— Gas Works, Salt Springs or Works, Alum Mines. or Works, Waterworks, Streams of Water, Canals, Inland Navigations, Docks, Drains, and Levels, Fishings, Rights of Markets and Fairs, Tolls, Railways and other Ways,

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Bridges, Ferries, and other Concerns of the like Nature, from; or arising out of any Lands, Tenements, Hereditaments, or Heritages, on the Profits of the Year preceding :

The Duty in each of the last Three Rules to be charged on the Person, Corporation, Company, or Society of Persons, whether Corporate or not Corporate, carrying on the Concern, or on their respective Agents, Treasurers, or other Officers having the Direction or Management thereof, or being in the Receipt of the Profits thereof, on the Amount of the Produce or Value thereof, and before paying, rendering, or distributing the Produce or the Value, either between the different Persons or Members of the Corporation, Company, or Society engaged in the Concern, or to the Owner of the Soil or Property, or to any Creditor or other Person whatever having a Claim on or out of the said Profits; and all such Persons, Corporations, Companies, and Societies respectively shall allow out of such Produce or Value a proportionate Deduction of the Duty so charged, and the said Charge shall be made on the said Profits exclusively of any Lands used or occupied in or about the Concern:

The Computation of Duty arising in respect of any such Mine carried on by a Company of Adventurers shall be made and stated jointly in One Sum; provided that if any Adventurer shall declare his Proportion or Share in such Concern, in order to a separate Assessment, it shall be lawful to charge such Adventurer separately, and nothing herein contained shall

be construed to restrain any Adventurer so separately assessed from deducting or setting against his Profits acquired in One or more of such Concerns his Loss sustained in any other of the said Concerns, over and above the Profits thereof, provided that such Loss shall not exceed the Proportion of such Adventurer which shall have been duly proved by the Company in their Computation of Duty, and shall have been allowed by the respective Commissioners, and in every such Case one Assessment only shall be made on the Balance of such Profit and Loss of the Adventurer so separating his Account in the Parish or Place where such Adventurer shall be chargeable to the greatest Amount, and the Amount of each Person's Share so

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proved and allowed shall be deducted from the general Assessment of the Company or Companies to which such Adventurer shall belong, and the respective Commissioners shall cause the Assessments on the said Companies to be rectified as the Case may require; and the Certificate of the Commissioners making such separate Assessment shall be an Authority to the Commissioners acting in another District to cause the Assessments on the respective Companies to which such Assessment shall belong to be rectified ; and in case such Loss shall arise in a different District than where such separate Assessment shall be to be made, the Certificate of the Commissioners acting for such other District of the Amount of such Loss, and the Proportion of such Adventurer therein, shall be Proof of the Deduction to be made by the Commissioners making such Assessment.

No. IV. - Rules and Regulations respecting the said Duties.

First. - All Properties chargeable to the Duties in Schedule (A.) shall be charged in the Parish or Place where the same are situate, and not elsewhere, except as herein-after is excepted :

Provided that the Profits arising from Canals, Inland Navigations, Streams of Water, Drains, or Levels, or from any Railways or other Eoads or Ways of a public Nature, and belonging to or vested in any Company of Proprietors or Trustees, whether Corporate or not Corporate, may be stated in one Account, and charged in the City, Town, or Place at or nearest to the Place where the general Accounts of such Concern shall have been usually made up ; and it shall be lawful for the said Proprietors or Trustees, having paid the Duties so chargeable, either to deduct a just Proportion thereof from the Interest payable to the Creditors of the said Properties, or any of them, or to pay such Interest in full, without making any such Deduction; and it shall be lawful for the said Creditors to receive such Interest in full, and they shall not be liable thereupon to the Penalty herein-after contained :

Provided also, that the Profits arising from any Manor or Royalty which shall extend into different Parishes may be assessed in One Account in the Parish where the Court for such

Manor or Royalty shall have been usually held : Provided also,

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that the Profits arising from all Fines received by the same Person, Body Politic or Corporate, or Company, may be assessed in One Account, where the Person to be charged under the Eegulations of this Act shall reside :

Second. — All Lands occupied by the same Person shall be brought into every Account thereof required to be delivered by such Person under this Act, whether the same shall be occupied by such Person as Owner or Tenant, or as Tenant under distinct Owners, or shall be situate in the same or in different Parishes or Districts, but the Charge thereon shall be in each Parish or District in proportion to the Value of the Property situate therein, of which Proportions the Occupier shall be required to deliver an Account in each Parish wherein any Part of such Lands is situate, and a separate Estimate shall be given of Lands in the same Occupation belonging to distinct Owners ; and if any Occupier of Lands situate in different Parishes or Places shall wilfully omit to deliver an Account of the Lands so occupied in each Parish or Place, although such Occupier may not reside in One or more of such Parishes or Places, he shall be charged for the Lands so omitted at Treble the Kate contained in this Act, over and above the Penalty herein imposed :

Provided always, that Lands held under the same Demise, or in the Occupation of the same Person as Owner, although situate in different Parishes, but wholly in the same District of Commissioners, may be charged in either Parish, at the Discretion of the said Commissioners, if they shall be satisfied that the Proportion in each Parish, either in respect of Quantity, Pent, or Value of the said Lands, cannot be ascertained; and if the said Lands extend into different Districts of Commissioners, then the Assessment shall be made in that District where the Occupier of such Lands doth reside.

• Third. — For any Dwelling House in the Occupation of a Tenant which, with the Buildings or Offices belonging thereto and the Land occupied therewith, shall be under the annual value of Ten Pounds, and for all Lands and Tenements let to any Tenant for a less Period than One Year, the Assessment thereupon shall be made on the landlord, but so as not to im-

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peach the Eemedry of Eecovery of the Duty from the Occupier, in default of Payment by the Landlord:

Fourth. — For any Compositions, Rents, or other Payments in lieu of Tithes, the Assessment thereupon may, if the Commissioners think fit, be made on the respective Occupiers of

the Lands from which such Tithes arise, or on the respective Persons liable to the Payment of such Compositions, Rents, or other Payments; and the said Commissioners may direct Notices to be delivered to such Persons respectively, for the Purpose of obtaining Returns of the Value of such Compositions, Rents, and Payments, subject to the like Penalties and under the Regulations of this Act for Returns of the annual Value of Lands :

Fifth. — If any Mine, enumerated in the Fifth Rule, 'No. III., of this Schedule, has, from some unavoidable Cause, been decreased and is decreasing in the annual Value thereof, so that the Average of Five Years will not give a fair and just Estimate of the annual Value thereof, it shall be lawful, after due Proof before the Commissioners for General Purposes in the District where such Mine shall be situate, to compute such annual Value on the actual Amount of such Profits and Gains in the preceding Year ending as aforesaid, subject to such Abatement on account of Diminution of Duty within the current Year as is herein provided in other Cases ; and if any such Mine shall, from some unavoidable Cause, have wholly failed, it shall be lawful for the said Commissioners, on due Proof thereof, wholly to discharge any Assessment made thereon:

Provided always, that whenever any such Mine shall be situate, or the Produce thereof shall be manufactured, in any Place other than where the Produce thereof shall be sold, the Profits arising therefrom shall be assessed and charged in the Parish and District where the said Mine is situate, or where the Produce thereof is manufactured, and not elsewhere:

Sixth. — If in estimating the Value of any of the Properties enumerated in No. II. or No. III. of this Schedule, as before mentioned, it shall appear that the Account required by the said Rules cannot be made out by reason of the Possession or Interest of the Party to be charged thereon having commenced

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within the Time for which the Account is directed to be made out, the Profits of One Year shall be estimated in proportion to the Profits received within the Time elapsed since the Commencement of such Possession or Interest:

Seventh. — The Duty to be charged under this Schedule, in respect of any House or Tenement occupied by any accredited Minister from any Foreign Prince or State, shall be charged and paid by the Landlord or Person immediately entitled to the Eent of the said House or Tenement:

Eighth. — The Duty to be charged in respect of any House, Tenement, or Apartment belonging to Her Majesty, in the Occupation of any Officer of Her Majesty, in right of his Office or otherwise, (except Apartments in Her Majesty's Royal Palaces,) shall be charged on and paid by the Occupier of such House,

Tenement, or Apartment, upon the annual Value thereof:

Ninth. — The Occupier of any Lands, Tenements, Hereditaments, or Heritages, being Tenant of the same, and paying the said Duties, shall deduct so much thereof in respect of the Rent payable to the Landlord for the Time being (all Sums allowed by the Commissioners being first deducted) as a Rate of Sevenpence for every Twenty Shillings thereof would by a just Proportion amount unto, which Deduction shall be made out of the first Payment thereafter to be made on account of Rent; and the Receivers of Her Majesty, and all Landlords, both mediate and immediate, their respective Heirs, Executors, Administrators, and Assigns, according to their respective Interests, and their respective Receivers or Agents, shall allow such Deduction upon Receipt of the Residue of the Rent, under the Penalty herein contained ; and the Tenant paying the said Assessment shall be acquitted and discharged of so much Money as if the same had actually been paid unto the Person to or for whom his Rent shall have been due and payable; and the Occupier of Lands charged on the Amount of any Composition, Rent, or Payment for Tithes arising therefrom, and paying the said Duties, shall be entitled to make the like Deduction from such Composition, Rent, or Payment, on paying the same:

Tenth. — Where any such Lands, Tenements, or Hereditaments are subject or liable to the Payment of any Rent-charge,

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whether under the Act passed for the Commutation of Tithes, or otherwise, or any Annuity, Fee-farm Rent, Rent Service, Quit Rent, Feu Duty, Teind Duty, Stipends to licensed Curates, or other Rent or annual Payment thereupon reserved or charged, the Landlord, Owner, or Proprietor by whom any Deduction shall have been allowed as aforesaid, and the Owner or Proprietor being also Occupier and charged to the said Duties, shall deduct and retain out of every such Rent-charge, Annuity, Fee-farm Rent, Rent Service, Quit Rent, Feu Duty, Teind Duty, Stipend, or other Rent or annual Payment aforesaid, so much of the said Duties or Payments on account of the same, (the just Proportion of the Sums allowed by the Commissioners in the Cases authorized by this Act being first deducted,) as a like Rate of Sevenpence for every Twenty Shillings on such Rent-charge, Annuity, Fee-farm Rent, Rent Service, Quit Rent, Feu Duty, Teind Duty, or Stipend, or other Rent or annual Payment aforesaid, respectively, shall by a just Proportion amount unto ; and the Receivers of Her Majesty, and all Persons who shall be anyways entitled unto such Rents, Duties, Stipends, or annual Payments, their Receivers, Deputies, or Agents, are hereby required to allow such Deduction, upon the Receipt of the Residue of such Monies as shall be due and payable for such Rents, Duties, or annual Payments, without any Fee or Charge for such Allowance, and under the Penalty herein contained; and the Landlord, Owner, Proprietor, and Occupier respectively, being charged as aforesaid, or having al-

lowed such Deduction, shall be acquitted and discharged of so much Money as if the same had actually been paid unto such Person to whom such Eent-charge, Annuity, Fee-farm Eent, Eent Service, Quit Eent, Feu Duty, Teind Duty, Stipend, or other Eent or annual Payment aforesaid, shall have been due and payable:

Eleventh. — Where any Mortgagee or Creditor in any Heritable Bond or Wadset shall be in the Possession of the Lands, Tenements, Hereditaments, or Heritages mortgaged or secured, such Mortgagee or Creditor shall be chargeable as Occupier when in the actual Occupation of the same, and when not in

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the actual Occupation of the same shall be liable to such Deduction as any other Landlord would be; and upon the Settlement of Accounts between such Mortgagee or other Creditor as aforesaid, and the Mortgagor or Debtor, the Duty payable in respect of the Amount of the Interest payable upon such Mortgage or other Debt as aforesaid shall be taken and allowed as so much Money received by such Mortgagee or other Creditor as aforesaid on account of such Interest :

Twelfth. — ^Where any Lands, Tenements, Hereditaments, or Heritages shall be occupied by the Owner at the Time the Assessment shall be made, who shall die before Payment of the Duty, the Heirs, Executors, Administrators, or Assigns, or other Person who on such Death may become entitled to the Kents and Profits thereof, shall be liable to the Payment of all Arrears of the said Duty due at the Time of such Death, and to all subsequent Instalments for that Year, according to their respective Interests, without any new Assessment:

Thirteenth. — Where any House shall be divided into distinct Properties, and occupied by distinct Owners or their respective Tenants, such Properties shall be charged distinct on the respective Occupiers:

Fourteenth. — No Deduction from the Estimate or Assessment on any Lands, Tenements, Hereditaments, or Heritages shall be allowed in any Case not authorized by this Act, nor unless an Account in Writing, signed by the Occupier thereof, or by the Party claiming such Deduction, stating the Nature and Amount thereof, shall have been delivered to the Assessor within the Time and pursuant to the Notice delivered by such Assessor; and if any such Deduction shall be made or allowed contrary to this Act, or without such Account in Writing as aforesaid, it shall be lawful for the Surveyor or Inspector to surcharge the Assessment, and to charge therein a Sum equal to the Amount of Duty by which the Assessment shall have been diminished on Occasion of such Deduction, which Surcharge shall not be annulled or vacated under any Pretence whatever, but shall stand Part of the Assessment.

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No. V. — Particular Deductions and Allowances in respect of the Duties under Schedule (A.)

First. — For the Amount of the Tenths and First Fruits, Duties, and Fees on Presentations paid by any Ecclesiastical Person within the Year preceding that in which the Assessment shall be made:

Second. — For Procurations and Synodals paid by Ecclesiastical Persons on an Average of Seven Years preceding that in which the Assessment shall be made:

Third. — For Repairs of Collegiate Churches and Chapels, and Chancels of Churches, or of any College or Hall in any of the Universities of Great Britain, by any Ecclesiastical or Collegiate Body, Rector, Vicar, or other Person bound to repair the same, on an Average of Twenty-one Years preceding as aforesaid, or as nearly thereto as can be produced :

Fourth. — For the Parochial Rates, Taxes, and Assessments charged upon or in respect of any Rent-charge confirmed under the Act passed for the Commutation of Tithes, on the Amount paid in the Year in which the Assessment shall be made :

Fifth. — For the Amount of the Land Tax charged on Lands, Tenements, Hereditaments, or Heritages under the said Act passed in the Thirty-eighth Year of the Reign of King. George the Third, where the Charge thereon shall not have been redeemed :

Sixth. — For the Amount charged on Lands, Tenements, Hereditaments, or Heritages by a public Rate or Assessment in respect of draining, fencing, or embanking the same:

In all which Cases there shall be allowed (unless such Payments, or any Part thereof, shall be made by a Tenant,) such Sum of Money as a like Rate of Seven-pence for every Twenty Shillings of the Sums paid would by a just Proportion amount unto; and the Sum so allowed shall be deducted from the Assessment to be made on the Property charged with such Payments, except in the Cases herein-after otherwise provided for ; (that is to say,)

Provided always, that the Allowances to be granted in pursuance of the First, Second, or Third Case may be granted to

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the Ecclesiastical or Collegiate Body, Rector, Vicar, or other Person aforesaid liable to the Charges therein mentioned, in One Sum, either by deducting the same from the Assessment

upon him (if any), or by Certificate; provided that no Abatement or Deduction shall be made from any Assessment for the Allowances granted in pursuance of any of the Cases mentioned in this Rule in respect of any such Charges or Payments as aforesaid, payable out of any Rent-charge confirmed under the Act passed for the Commutation of Tithes, but such Allowances shall be granted by Certificate in the Manner herein-after directed.

LXI. And be it enacted. That the Person entitled to any of the Allowances mentioned in the next preceding Rule, which are directed or authorized to be made by Certificate, and which shall not have been made by Deduction or Abatement from the Assessment, shall claim such Allowance at any Time after the Expiration of the Year of Assessment, before the Commissioners for General Purposes of the District in which the Property charged with the Payments and Charges mentioned in the said Rule shall be situate; and the said Commissioners, upon due Proof before them that the Claimant is entitled to such Allowance shall certify the Particulars and Amount thereof to the Commissioners for Special Purposes at the Head Office for Stamps and Taxes in England[^] and thereupon the said last-mentioned Commissioners shall grant an Order for the Payment of such Allowance, directed to the Receiver General of Stamps and Taxes, or to an Officer for Receipt or Collector of the Duties granted by this Act, or to a Distributor or Sub-Distributor of Stamps, as may be most convenient for the Party entitled to such Allowance, and such Receiver General or Officer as aforesaid is hereby required, on Production and Delivery to him of such Order, to pay the Amount of such Allowance to the Party entitled thereto out of any Money in the Hands of such Receiver General or Officer arising from any Duties placed under the Management of the Commissioners of Stamps and Taxes, taking the Receipt of the Party entitled to such Allowance for the same, by Endorsement on such Order.

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No. VI. — Allowances to be made in respect of the said Duties in Schedule (A.)

For the Duties charged on any College or Hall in any of the Universities of Great Britain, in respect of the public Buildings and Offices belonging to such College or Hall, and not occupied by any individual Member thereof, or by any Person paying Rent for the same, and for the Repairs of the public Buildings and Offices of such College or Hall, and the Gardens, Walks, and Grounds for Recreation repaired and maintained by the Funds of such College or Hall :

Or on any Hospital, public School, or Almshouse, in respect of the public Buildings, Offices, and Premises belonging to such Hospital, public School, or Almshouse, and not occupied by any individual Officer or the Master thereof, whose whole

Income, however arising, estimated according to the Rules and Directions of this Act, shall amount to or exceed One hundred and fifty Pounds per Annum, or by any Person paying Rent for the same, and for the Repairs of such Hospital, public School, or Almshouse, and Offices belonging thereto, and of the Gardens, Walks, and Grounds for the Sustenance or Recreation of the Hospitallers, Scholars, and Almsmen, repaired and maintained by the Funds of such Hospital, School, or Almshouse, or on any Building the Property of any Literary or Scientific Institution, used solely for the Purposes of such Institution, and in which no Payment is made or demanded for any Instruction there afforded, by Lectures or otherwise; provided also, that the said Building be not occupied by any Officer of such Institution, nor by any Person paying Rent for the same :

The said Allowances to be granted by the Commissioners for General Purposes in their respective Districts :

Or on the Rents and Profits of Lands, Tenements, Hereditaments, or Heritages belonging to any Hospital, public School, or Almshouse, or vested in Trustees for charitable Purposes, so far as the same are applied to charitable Purposes :

The said last-mentioned Allowances to be granted on Proof before the Commissioners for Special Purposes of the due Application of the said Rents and Profits to charitable Purposes

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only, and in so far as the same shall be applied to charitable Purposes only:

The said last-mentioned Allowances to be claimed and proved by any Steward, Agent, or Factor acting for such School, Hospital, or Almshouse, or other Trust for charitable Purposes, or by any Trustee of the same, by Affidavit to be taken before any Commissioner for executing this Act in the District where such Person shall reside, stating the Amount of the Duties chargeable, and the Application thereof, and to be carried into effect by the Commissioners for Special Purposes, and according to the Powers vested in such Commissioners, without vacating, altering, or impeaching the Assessments on or in respect of such Properties; which Assessments shall be in force and levied notwithstanding such Allowances.

LXII. And be it enacted, That where any Allowance mentioned in Number VI. of the said Schedule (A.) shall be granted by the Commissioners for Special Purposes, under the Authority of this Act, they shall give a Certificate thereof together with an Order for Payment of the same, directed to the Receiver General of Stamps and Taxes, or to an Officer for Receipt or Collector of the Duties granted by this Act, or to a Distributor or Sub-Distributor of Stamps in the Manner herein provided with respect to Allowances to be granted under Number V. of the said Schedule, and such Allowance shall in like Manner be

paid to the Party entitled thereto.

LXIII. And be it enacted. That the Duties hereby granted, contained in the Schedule marked (B.), shall be assessed and charged under the following Rules, which Rules shall be deemed and construed to be a Part of this Act, and to refer to the said last-mentioned Duties as if the same had been inserted under a special Enactment.

Schedule (B.)

No. VII. — Rules for assessing and charging the Properties under Schedule (B.)

The Duties last before mentioned shall be charged in addition to the Duties to be charged under Schedule (A.) on all

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lie Properties in this Act directed to be charged to the said Duties, according to the General Rule in Number I. Schedule (A.) before mentioned, on the full Amount of the annual Value thereof estimated as by this Act is directed (except a Dwelling House, and the domestic Offices thereunto belonging, and which Dwelling House and Offices shall not be occupied, by virtue of one and the same Demise, with a Farm of Lands for the Purpose of farming such Lands, or with a Farm of Tithes for the Purpose of farming the same ; and except Warehouses or other Buildings occupied for the Purpose of carrying on a Trade or Profession) ; provided that in all Cases where Lands are subject to a Rent-charge in lieu of Tithes under the Act passed for the Commutation of Tithes, and in all other Cases where Lands in England are not subject to Tithes, or to any Modus or Composition Real in lieu thereof, there shall be deducted out of the Duties contained in this Schedule a Sum not exceeding One Eighth Part thereof; and in all Cases where such Lands are subject to a Modus or Composition Real, and not subject to any Tithes, there shall be deducted out of such Duties so much thereof as, together with the like Rate on such Modus or Composition Real, shall not exceed One Eighth Part of such Duties as aforesaid ; and in all Cases where such Lands are subject to a Modus or Composition Real in lieu of certain specific Tithes, and also are subject to certain other specific Tithes, or where such Lands are free of certain specific Tithes, and are subject to certain other specific Tithes, the annual Value of such Lands shall, for the Purpose of charging the Duties under this Schedule, be estimated at the Rack Rent at which the same would let by the Year if wholly free from Tithes, and there shall be deducted therefrom the Amount or Value of One Eighth of the said Duties chargeable on the said Estimate, as in Cases of Tithe-free Lands : Provided also, that any Person being Lessee and Occupier of Tithes or Teinds taken in Kind, or being the Occupier of the Lands from whence such Tithes or Teinds shall arise, and compounding for the same, shall be charged in respect of the Occupation at the Rate of Two-pence for every Twenty

Shillings of the annual Value thereof, estimated as aforesaid:

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Provided also," tliat the several Properties herein-after described in Number VIII. shall be assessed and charged in manner therein mentioned.

No. VIII. — Rules for estimating the Properties herein-after next mentioned under Schedule (B.)

The Profits arising from Lands occupied as ISTurseries or Gardens for the Sale of the Produce, and Lands occupied for the Growth of Hops, shall be estimated according to the Rules contained in Schedule (D.), and the Duty shall be charged at the Rate contained in the said Schedule; and when the said Duty shall have been so ascertained, the same shall be charged under Schedule (B.) as Profits arising from the Occupation of Lands, except where the Lands so occupied for the Growth of Hops shall be Part of a Farm held under One Demise, or by the same Person as Owner, and shall not exceed One Tenth Part of such Farm, in which Case the Duty thereon under this Schedule shall be charged together in One Sum as for a Farm by the said General Rule in Schedule (A.) mentioned.

No. IX. — Rules for charging the said Duties under Schedules (A.) and (B.)

First. — The said Duties, except where other Provisions are made as aforesaid for estimating particular Properties shall be estimated according to the General Rule contained in Schedule (A.), and shall be charged on and paid by the Occupier for the Time being, his Executors, Administrators, and Assigns:

Second. — Every Person having the Use of any Lands or Tenements shall be taken and considered, for the Purposes of this Act, as the Occupier of such Lands or Tenements :

Third. — The said several Duties shall on each Assessment thereof be levied on the Occupier for the Time being without any new Assessment, notwithstanding any Change in the Occupation thereof: Provided that every Tenant on quitting the

18 That part of this section which eluding the phrase "Provided also, begins "in all cases where lands are that", has been repealed by 59 & subject to a rent-charge", to and in- 60 Vict., c. 28, § 40.

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Occupation shall be liable for tbe Arrears at the Time of so quitting, and for such further Portion of Time as shall then have elapsed, to be settled and levied by the respective Commissioners, and repaid to the Occupier by whom the same shall

have been paid; and the Executors or Administrators of any Tenant who will die before the Payment of such Assessment shall be liable in like Manner as the Testator or Intestate would have been if living: Provided also, that every Tenant quitting before the Time of making the Assessment shall be liable for such Portion of the Year as shall have elapsed at the Time of his so quitting, to be, adjusted and settled by the respective Commissioners.

No. X. — Rules for estimating the annual Value of Properties before described in Schedules (A.) and (5.) or either of them.

First. — When any Landlord shall be subject to any Covenant or Agreement to pay or satisfy, out of the Rent reserved on any Lands or Tenements, any Parochial Rates, Taxes, or Assessments which by Law are a Charge on the Occupier, or any Composition for Tithes; or where any Rector, "Vicar, or other Person entitled to any Rent or other annual Payment to be made in lieu of Tithes, (except a Rent-charge confirmed under the Act passed for the Commutation of Tithes,) or any Composition for Tithes, shall pay or satisfy out of the Amount thereof any such Parochial Rates, Taxes, or Assessments charged on such Tithes, Rent, Composition, or other annual Payment aforesaid, then and in every such Case the annual Value shall be estimated for the Purposes of this Act exclusive of such Rates, Taxes, or Assessments, and of such Composition for Tithes, to be Computed on the Amount thereof bond fide paid by such Landlord or other Person aforesaid in and for the Year preceding the Year of Assessment; or where the Owner shall be also Occupier of such Lands or Tenements, and shall have paid any Parochial Rates, Taxes, or Assessments charged on the same, or any Composition for Tithes thereon, then the said annual Value shall be also estimated exclusive of such Rates, Taxes, and Assessments and Composition for Tithes, to be computed in like Manner as aforesaid:
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Second. — Where any Tenant of Lands or Tenements shall be subject to any Covenant or Agreement to pay or satisfy any Aids, Taxes, Rates, or Assessments by Law chargeable on or payable by the Landlord, the Amount thereof which shall have been bond fide paid by such Tenant in and for the Year preceding the Year of Assessment shall, in making the Estimate for the Purpose of charging the Duty in respect of Occupation, be added to the Rent reserved, in case the same shall have been let within the Period of Seven preceding Years, and if not so let, the Estimate shall be made according to the general Rule in Schedule (A.), with the like Addition thereto of the Amount of such Payment.

Third. — "Where the Amount of Rent of Lands or Tenements reserved in Money shall depend in the Whole or in Part on the Price of Corn or Grain, the Estimate for the Purpose of Charg-

ing the Duties in Schedule (A.) shall be made on the Amount payable according to the Average Prices or Fiars fixed in the Year preceding the Year appointed for Payment of the Duty, and in the same Manner by which such Rents have usually been ascertained between the Landlords and Tenants ; but where the Whole or a Part of the Rent shall be reserved in Corn or Grain, then the said Estimate shall be made on the like Average Price or Fiar computed on the Quantity of Corn or Grain delivered or to be delivered in the Year appointed for Payment of the Duty ; or where such Computation cannot be made, the Estimate aforesaid may be made on the annual Value of such Lands estimated according to the said General Rule :

Fourth. - Where the Amount of Rent reserved on Lands or Tenements shall depend on the actual Produce thereof, • either in respect of the Price or Quantity of such Produce, the Estimate for the Purpose of charging the Duties in Schedule (A.) shall be made on the Amount or Value of such Produce in the Year preceding the Year appointed for Payment of the Duty, according to the Prices fixed and according to the Quantity produced in that Year, by the same Rules and in the same Manner by which such Rents have usually been ascertained between the Proprietors and their Lessees or Tenants, and where the Prices or Fiars shall vary in the Two Years of Assessment, or

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the Amount of Produce shall vary in those Years, the Assessment shall, on Appeal or Surcharge, be rectified accordingly:

Fifth. - Every Estimate of such Property in Scotland shall be made without reference to the Cess or Tax Roll or valued Rents heretofore used in Scotland, or any Stent thereon, and shall be made according to the General Rule contained in Schedule (A.) to the best of the Belief and Judgment of the Commissioners, Assessors, and others employed in charging the said several Duties.

LXIV. And be it enacted, That upon every Account of the annual "Value of the several Properties aforesaid, to be charged under Schedules (A.) and (B.) delivered in manner before directed to the Assessor, he shall make an Assessment of the said Property on the Amount of the Sum ascertained by such Account, if he shall be satisfied with such Amount; but if he shall not be satisfied therewith, or if no such Account shall have been returned, or if the Occupier or other Person aforesaid shall not be resident within the limits of the District of such Assessor, and no such Return shall have been made, then the said Assessor shall estimate, to the best of his Judgment, the annual Value of the said Property of which no sufficient Account shall have been delivered, and make an Assessment of the same accordingly; and in doing so it shall be lawful for such Assessor in every Case relating to Lands or Tenements to be estimated according to the said General Rule by the annual Value thereof, where such annual Value cannot be other-

wise ascertained, and he is hereby required in every such Case, to make such Assessment according to the following Rules j (videlicet^)

lio. XI.

First. — Where the last Rate made for the Relief of the Poor in any Parish or Place shall be made throughout by a Pound Rate on the annual Value, as the same would be estimated according to Schedule (A.), the Assessment thereon to be made under this Act shall be made on the same Sums respectively as in such Rate:

Second. — ^Where the said Rate shall be made throughout by

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such Pound Eate on any proportionate Part of the annual Value as aforesaid, the Proportion thereof shall be observed as in the said Rate, but the Assessment thereon to be made under this Act shall be made at the same Sums respectively as they would have been estimated at if the said Eate had been made on the full Amount of such annual Value :

Third. — Where Properties of different Kinds shall be rated in the said Eate according to different Proportions of the Value thereof as aforesaid, or shall be rated therein at different Eates of such Value, but nevertheless the Properties of the same Kind shall be rated in a due Proportion to each other, both as to the Value and Eate of Charge, in every such Case the Eule of rating Lands, both as to the Value and the Eate of Charge, shall, in making the Assessment under this Act, be observed throughout, as well with respect to such Lands as to the other Properties therein rated, so far as relates to such Eates as shall be made either on the full Value of the Properties or on any proportionate Part thereof:

Fourth. — In all Cases not falling within the Three preceding Eules, but nevertheless where the Properties shall appear to the Assessor to be rated in the said Rate in the same Proportion to each other, though the Proportion of such Rate to the Value of the Property rated be not known, and the Assessor is able to ascertain the Rack Rent of all or any of the Properties which shall have been so let within the Period of Seven Years preceding within the Limits of the Parish or Place where the said Assessors shall act, he shall make an Estimate of such Properties on the Amount of such Rents respectively, and the Amount contained in the Estimates so made shall form the Basis on which the Estimates of other Properties, of which the Rack Rent shall not have been so ascertained, shall be made, and he shall make his Estimate of all other Property in a Sum bearing the same Proportion, as near as the same can be computed, to the Amount of such first Estimates, as the Sums at which all such

other Properties of which the Rent has been so ascertained are valued at in such Rate bear to the Sum charged in the said Rate on the said Properties first estimated; and he shall apportion the Sum so estimated on such other Properties in the same Pro-

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portion, as near as the same can be computed, as they are respectively rated at in such Rate, and shall make his Assessment under this Act accordingly; and in Cases where the same Rule of Proportion shall not have been observed in rating different Kinds of Property, then the Assessor shall make an Estimate as above directed upon each of such Kinds of Property for the Purpose of forming a Basis on which the Estimates of other Properties of the same Kind may be made.

LXV. Provided always, and be it enacted, That where any Dwelling House or Tenement, together with the Offices, Gardens, and Lands occupied therewith, or any Lands separately occupied, shall be under the annual Value of Ten Pounds, and the Assessor shall be able to estimate the said Value, either by the Rules before mentioned, or from his own Knowledge, or otherwise, it shall be lawful for him to estimate such Property accordingly, to the best of his Judgment, and to make an Assessment thereon, without requiring a Return of the annual Value as aforesaid, unless the Surveyor or Inspector shall object to such Estimate, and shall require a Notice for that Purpose to be delivered; and if any Assessor, not having given such Notice, shall neglect to estimate the true annual Value of the said Properties, and to assess the same according to this Act, he shall forfeit any Sum not exceeding Ten Pounds.

LXVI. And be it enacted. That in case any Tenant at Rack Rent shall produce to the Assessor the Lease or Agreement in Writing under which he immediately holds any Premises to be charged as aforesaid according to the General Rule, the Production of which Lease or Agreement every such Assessor is hereby authorized to demand whenever the same shall appear to him necessary; and in case it shall appear by such Lease or Agreement that the same Premises shall have been let within the Period of Seven preceding Years, and no other Consideration in Money than the Rent reserved shall be contained in such Lease or Agreement, it shall be lawful for such Assessor to make his Assessment according to such Rent, any thing before contained to the contrary notwithstanding; but such Assessment shall not be binding, in case it shall appear to the Commissioners that the said Lease or Agreement doth not express the full

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Consideration, whether in Money or Value, for the Demise, or the Rent bond fide paid for the same, or that the Rent reserved is less than the Rack Rent on Occasion of Repairs or Improve-

ments done or to be done by the Lessee or Assigns, or is made in any other respect with Intent to conceal the annual Value of such Premises, or to diminish the Estimate to be made thereon, or hath been assigned to such Tenant, or any former Tenant, for any Consideration in Money or Value paid or agreed to be paid: Provided always, that regard shall be had to the Cases before mentioned, where the Amount of the reserved Rent shall be increased by reason of any Covenant or Agreement by the Landlord to discharge the Tenant's Taxes, Rates, Assessments, or Duties before mentioned, or where the same shall be decreased by reason of any Covenant or Agreement by the Tenant to discharge the Landlord's Taxes, Rates, or Assessments, or on Occasion of any Expenses incurred or to be incurred by the Lessee or Assigns, whether mentioned or not mentioned in such Lease or Agreement, and to the Deductions to be made on account of any Aid or public Rate or Assessment before described: Provided also, that upon every Demise for Years of Lands made or to be made in consideration of a Rent reserved, and also in consideration of certain Improvements to be made in the Lands demised at the proper Cost and Charge of the Lessee or Tenant, if it shall be proved to the Satisfaction of the Commissioners for General Purposes acting for the Division where such Lands are situate that the Rent reserved hath been settled on the Estimate of the medium annual Value of the said Lands, computed on an Average for the whole Term granted in expectation of the progressive Improvement of the said Farm at the Cost and Charge of the said Lessee or Tenant, and the said annual Rent is fixed and made payable to the same Amount in each Year on the said Average, whereby the said Rent so estimated and made payable did or doth exceed the just annual Value of the said Lands as the same were or are worth to be let at Rack Rent at the Commencement of the Term granted by the said Demise, then and in such Case the Estimate of the annual Value of the said Lands, and the Assessment thereupon, shall be made and computed according to the follow-

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ing Rules; (that is to say,) in regard that the Rent reserved hath been settled on a fair Average of the annual Value of the said Lands, computed on the whole of the Term so granted, the said Commissioners, on due Proof of the Circumstances before mentioned, shall cause the said Duty payable in respect of the Property in the said Lands to be computed and charged on the Amount of the Rent so reserved and made payable as aforesaid, for each Year of Assessment, without Variation, during the said Term, subject nevertheless to such Deductions as by this Act are allowed; and the said Commissioners shall also cause the said Duty payable in respect of the Occupation of the said Lands to be computed and charged on the full and just Value of the said Lands, to be ascertained at the Times and in manner herein-after mentioned; (that is to say,) on all such Demises made before the passing of this Act, the annual Value of the said Lands shall be the Rack Rent at which the same are worth to be let by the Year, to be ascertained at the

Commencement of the First Year of Assessment after the passing of this Act, by a Valuation to be made thereof under the Powers and according to the Directions herein contained, and to the Satisfaction of the said Commissioners, which Valuation shall be in force for the Term limited for the Continuance of this Act, if the said Demise shall not sooner expire; and the Amount ascertained by such Valuation shall be deemed to be the Eack Eent at which the said Lands are worth to be let for the said Term, if the said Demise shall not sooner expire, and the Assessment thereupon shall in each Year of the said Term be made on the said Valuation ; and on all such Demises to be made after the passing of this Act the annual Value of the said Lands shall be the Eack Eent at which the same are worth to be let by the Year, to be ascertained at the Commencement of the said Demise, by a like Valuation to be made thereof in manner aforesaid.

LXVII. And be it enacted, That in case any Tenant at Eack Eent under any parol Demise from Year to Year, within the Period mentioned in the said General Eule, or any Tenant who, by reason of any Mortgage or other Contract, shall not tave the Custody or Possession of or the Power over any Lease or

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Agreement in Writing under which he holds the Premises demised within the said Period, and who shall give reasonable Proof to the Commissioners why he is unable to produce the same, shall deliver to the Assessor an Account in Writing signed by such Tenant of the actual Amount of the annual Rent reserved on such Demise, such Account so delivered shall be deemed a Compliance with this Act, in all Cases where he may be called upon under the Authority of this Act to produce such Lease or Agreement; and it shall be lawful for such Assessor to make his Assessment according to such Rent, any thing before contained to the contrary notwithstanding; but such Assessment shall not be binding in case it shall appear to the said Commissioners that the said Account doth not express the full Consideration for such Demise, or the Rent bond fide paid for the same, or that the Rent reserved is less than the Rack Rent on Occasion of any Payments as aforesaid made or to be made by such Tenant, or is made in any other respect with Intent to conceal the annual Value of the Premises held under such Demise, or to diminish the Assessment to be made thereon: Provided always, that Lands held for a longer Period than Seven Years by any Tenant under a Demise from Year to Year, or at Will, shall be estimated and assessed at the annual Value thereof, unless the Tenant shall show and prove to the Satisfaction of the said Commissioners that the same Lands are held under a Demise which commenced by Agreement made and a Rent fixed within the Period of Seven Years, on the Determination of the former Demise thereof, by due Notice within the said Period.

LXVIII. And be it enacted, That every Person who shall

wilfully deliver any such Account as aforesaid which shall be false, or who shall wilfully refuse, neglect, or omit to produce any Lease or Agreement with Intent to conceal the annual Value of the Premises therein comprised, or to diminish the Estimate to be made thereon, shall forfeit the Sum of Twenty Pounds, and shall be liable to be charged in Treble the Duty hereby directed to be charged as aforesaid, computed on the annual Value of the Premises held under such Demise, estimated according to this Act; and the Inspector and Sur-

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vayor are hereby respectively required to surcharge the same, and the Commissioners are required to make an Assessment accordingly.

LXIX. And he it enacted, That every Tenant of Lands, Tenements, or Heritages in Scotland shall, within Ten Days after the Assessor shall have left at his usual Place of Abode, or at any Dwelling House or other Place on the Premises to be charged with the Assessment, a Note in Writing requiring the same, produce to such Assessor the Tack or Lease or other Agreement or Articles in Writing, under which such Tenant holds such Lands or Tenements, or where the same shall not be in the Power, Custody, or Possession of such Tenant, or there shall be no such Tack, Lease, or Agreement or Articles, then he shall leave with such Assessor, or at his Dwelling House, within the Time before mentioned, a Note in Writing of the actual Rent annually reserved and payable, and of any other valuable Consideration given or to be given to the Landlord of such Lands and Tenements as a further Consideration for such Tenancy, under the Penalty of Treble the Duty hereby chargeable thereon, in case of any wilful Neglect to comply with such Notice; and it shall be lawful for such Assessor to make his Assessment on the Production of such Lease or Agreement or Articles, according to the Rent therein reserved and made payable; and in case of Non-production of such Lease or Agreement or Articles in Writing, then upon the Rent reserved or made payable, according to the Account thereof delivered as aforesaid, if he shall be satisfied that the said Lands, Tenements, or Heritages have been bona fide let at the reserved Rent notified to him as aforesaid, without other valuable Consideration; but in case such Assessor shall not be satisfied with the Notification given to him, or in case no such Notification shall be given, then such Assessor shall make the Assessment as directed in the foregoing Rules: Provided always, that if the Farm occupied by such Tenant shall be distant more than Ten Miles from the Dwelling House of such Assessor, it shall be competent to such Tenant to lodge his Lease or Note in Writing of the Rent with the nearest Justice of the Peace, or with the Clergyman of the Parish where the Farm is situated ; and

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the said Justice of the Peace or Clergyman respectively shall be obliged to show the said Lease or Note of the Rent to the said Assessor when required.

LXX. And be it enacted, That the said several Duties shall be assessed on all Lands, Tenements, and Hereditaments, whether occupied at the Time of Assessment or not ; and so far as respects the Duties chargeable under Schedule (A.), in case any Lands charged to the said Duties shall be unoccupied, and no Distress can be found on the same at the Time such Duties shall be payable, it shall be lawful for the Collector of the Parish or Place where the said Lands are situate for the Time being, at any Time after, to enter upon the said Lands when there shall be any Distress thereupon to be found, and the Distress to seize and sell, under the like Powers as he might have distrained on the same Lands if in the Occupation of such Person at the Time the Duties became due: Provided always, that the said Duties, or either of them, shall not be levied on any House which shall be or become unoccupied for such Year, or Portion of the Year, as the same shall be unoccupied, but the Assessment thereupon for such Year, or Portion of the Year, as aforesaid, shall, upon Appeal, be discharged or diminished by the Commissioners, on due Proof of the Time during which such House remained unoccupied.

LXXI. And be it enacted, That where by any Assessment the Duties shall be charged on Tithes or Teinds, and the same shall not be paid within the respective Times limited by this Act, it shall be lawful for the Collector and Officer respectively to distrain upon such Tithes or Teinds, or any other Goods or Chattels of the Owner of such Tithes or Teinds, wherever the same can be found, and to seize, take, and sell so much thereof as shall be sufficient for levying the said Assessment, under and subject to the like Powers granted by the said Acts relating to the Duties of Assessed Taxes in other Cases.

LXXII. And be it enacted. That when any Assessment shall be charged on any Composition for Tithes or Teinds, or any Rent or Payment in lieu thereof, the Occupier of the Lands and Premises charged with such Composition, Rent, or Payment shall be answerable for the Duties so charged, and may deduct

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"the same out of the next Payment on account thereof; and where any Assessment shall be charged on the Profits of Manors or Eoyalties, or of Markets or Fairs, or on Tolls, Fisheries, or any other annual or casual Profits not distrainable, the Owner or Occupier, or Receiver of the Profits thereof, shall be answerable for the Duties charged thereon, and may retain and deduct the same out of such Profits; and in every such Case the Collector shall distrain upon such Persons respectively by any of the Ways and Means prescribed by the said Acts relating to the Duties of Assessed Taxes.

LXXIII. Provided always, and be it enacted. That no Contract, Covenant, or Agreement between Landlord and Tenant, or any other Persons, touching the Payment of Taxes and Assessments to be charged on their respective Premises, shall be deemed or construed to extend to the Duties charged thereon under this Act, nor to be binding contrary to the Intent and Meaning of this Act ; but that all such Duties shall be charged upon and paid by the respective Occupiers, subject to such Deductions and Repayments as are by this Act authorized and allowed; and all such Deductions and Repayments shall be made and allowed accordingly, notwithstanding such Contracts, Covenants, or Agreements.

LXXIV. And be it enacted. That the respective Assessors shall make their Assessments on all Lands, Tenements, and Hereditaments, or Heritages, within the Limits of those Places for which they are to act, and shall set down therein the full and just annual Value of all such Lands and Premises estimated in each particular Case, according to the Directions of this Act, together with the Names and Surnames of the Occupiers and Proprietors thereof, and shall deliver the same, together with all Returns which shall have been made to them, as well of such annual Value as of any Deduction claimed to be made therefrom, to the said Commissioners for General Purposes, such Returns being first progressively numbered; and whenever the said Assessors shall not be able to make their Assessments according to the Provisions of this Act, or shall be obstructed therein, it shall be lawful for them to make Application to the said Commissioners, or to any Inspector or

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Surveyor, who shall severally instruct such Assessor in making his Assessments, and assist him in the Execution of this Act, according to the Powers and Authorities hereby vested in them respectively.

LXXV. And be it enacted, That the Assessors to be appointed for the said Duties in England shall, at the Time of bringing in their Assessments if required so to do by any Surveyor or Inspector of the said Duties, or by the respective Commissioners, give Notice to the Overseers of the Poor of the Parish or Place where they shall act, to produce or cause to be produced to the said Commissioners the Book or Books, or a true Copy thereof, in which shall have been entered the Rates made for the Relief of the Poor of such Parish or Place, and also a true Copy of the last Rate made for the Relief of the Poor in such Parish or Place, and such Overseers shall without fail produce such Book or Books to the said Commissioners, or deliver the same to the said Inspector or Surveyor, for their Use, and the said Assessors shall declare in Writing, signed by them, whether the said Rates are made on the full Value of the Properties therein, or on any and what proportionate Part thereof, to the best of their Knowledge and Belief; and the said Commis-

sioners shall, in ease the said Surveyor or Inspector shall allege and show to the Satisfaction of the said Commissioners that the said Assessments or any of them have not been made according to the Directions of this Act, examine the said Assessors, and also the Overseers of the Poor for the same Parish or Place, or any of them, being duly summoned for that Purpose, on their Oaths, touching the Proportions between the said Rates and the Value of the Properties charged therein, and whether the Properties, or any and which of them, have been valued therein at the Amount or at any and what Proportion of the annual Value thereof respectively, and what ought to be the just Proportion between the Rates on the different Properties therein charged, if the Amount of the Values thereof,, and the same Proportion between the Rates, had been observed throughout the Rate, and also what Property shall have been omitted to be rated, and which of the Properties in the Parish or Place shall be entitled to be assessed on the Profits or on

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an Average of the Profits according to this Act; and the said Inspector or Surveyor shall carefully examine the Assessments made by the same Assessors with the last Eate made for the Relief of the Poor, in order that he may the better ascertain whether the said Assessments have been made on all the Properties situate in each Parish, and according to the Directions prescribed by this Act, and from the Result of the said Inquiries may rectify the same in any Particulars which in his Judgment may be requisite before the Commissioners allow and sign such Assessment as herein directed; and in so doing may pursue, if he think fit, the Rules in Number XI. of this Act before mentioned, relating to the said Rates for Relief of the Poor.

LXXVI. And be it enacted. That the several Commissioners, Inspectors, Surveyors, and Assessors acting respectively in the Execution of this Act, or any Person authorized by them respectively, shall have Liberty from Time to Time, and at all seasonable Times, to inspect and take Copies of or Extracts from any Book kept by any Parish Officer or other Person, of or concerning the Rates made for the Relief of the Poor, or any other public Taxes, Rates, or Assessments, in any Place within the Limits for which they shall be appointed, without the Payment of any Fee whatever ; and if any Person in whose Custody or Power any of the said Books shall be shall refuse or neglect to permit the said Inspection, or the Copies or Extracts to be made as aforesaid, or to attend the said Commissioners with any such Book when required so to do in pursuance of this Act, such Person so offending shall forfeit any Sum not exceeding Twenty Pounds nor less than Five Pounds.

LXXVII. And be it enacted. That it shall be lawful for the Assessors in each Parish or Place in Scotland, and they are hereby required, to take to their Assistance the School-

master in such Parish or Place, for the Purpose of making such Assessments of the Lands and other Premises within their respective Limits; and at the Time of bringing in their Assessments they shall make Oath of the Truth of the same, and -that such Assessments are made according to the best of their

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Skill and Judgment, and shall submit to be examined on Oath before the said Commissioners in all Matters and Things concerning the said Assessments which the said Commissioners shall require for their Information.

LXXVIII. And be it enacted. That in Cases where the Occupier or other Person chargeable shall, upon due Notice under this Act, omit to produce an Account in Writing as aforesaid of the Amount of the annual Value of the Property in his Occupation, estimated according to the General Rule in Schedule (A.), or such other Rules in the said Schedule as are applicable to such Property, or shall have delivered an Account with which the Commissioners shall be dissatisfied, the several Assessors, Inspectors, and Surveyors, having first obtained an Order in that Behalf, signed by the said Commissioners, and taking to their Assistance such Person or Persons of Skill as shall be named in such Order, shall, after Two Days Notice to the Occupier, have full Power, at all seasonable Times in the Daytime, to view and examine any Lands or other Property chargeable, in order to make a Survey thereof, or otherwise to ascertain the annual Value at which the same ought to be charged by virtue of this Act, and for so doing shall have Liberty to enter upon any Lands or Grounds, whether inclosed or not, and to value the same, and to measure and survey the same if they cannot otherwise ascertain the annual Value thereof.

LXXIX. And be it enacted, That within a reasonable Time after the respective Surveyors and Inspectors shall have had the Examination of the Assessments delivered by the Assessors,, the Commissioners shall proceed to take the same into consideration, and in case the Surveyor or Inspector shall not have objected thereto, and the said Commissioners shall be satisfied that the said Assessments have been made truly and without Fraud, and so as to charge the several Properties contained therein with the full Duty which ought to be charged upon them respectively, the said Commissioners shall allow and sign such Assessments: Provided always, that in case the Surveyor or Inspector shall object to any such Assessment, and shall apply for a Revision thereof, suggesting in Writing.

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to the Commissioners any Error, Mistake, or Fraud in making the same, it shall be lawful for the said Commissioners, accord-

ing to the best of their Judgment, to rectify such Assessment,, so that the Duty may be fully charged, according to the Intent and Meaning of this Act.

LXXX. And be it enacted. That so soon as the Assessments- for any Parish or Place under Schedules (A.) and (B.) shall be allowed and signed as aforesaid the Commissioners shall cause Notice thereof and of the Day for hearing Appeals therefrom to be given in such Manner as they shall judge expedient, which JSTotiee may be given, either by delivering a Copy of such Assessment to the Assessor of such Parish or Place, for the Inspection of the Parties charged thereby, together with a public JSTotiee of the Day of Appeal, to be affixed on or near to the Church Door or on any other public Place in the Parish, or by delivering to each Party charged the Amount of his Assessment, together with a Note of the Day of Appeal, and such Notices shall be made and given at least Pourteen Days before the Day of Appeal so fixed.

LXXXI. And be it enacted. That if upon Appeal any Dispute shall arise touching the annual Value of any Lands, Tenements, Hereditaments, or Heritages, and the Commissioners shall deem it necessary that a Valuation thereof should be taken and made by any Person of Skill, it shall be lawful for them to direct the Appellant to cause such Valuation to be: made by any Person to be named by the said Commissioners, the Costs and Charges whereof shall abide the final Determination of the said Commissioners, and it shall be lawful for them to make an Assessment according to such Valuation, and to require the same to be verified on the Oath of the Person making the same; but in case the Appellant shall not proceed with efi'ect to cause such Valuation to be made as aforesaid, the said Commissioners shall make an Assessment according to the best of their Judgment: Provided always, that it shall be competent to the said Commissioners, in every such Case where the Valuation so made shall exceed the Value put upon the same Lands, Tenements, Hereditaments, or Heritages by the Appellant, to direct the Costs and Charges attending the same

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to be paid by him; but if they shall be of opinion that such Costs and Charges have not been incurred through any Default of the said Appellant, they shall direct the same to be paid by the Collector of the Parish or Place, who, on the Certificate of the Commissioners present at the Time of the Determination, shall pay the same, and the Sum so paid shall be allowed to such Collector in his Accounts with the proper Officer for Receipt, on delivering to him such Certificate, together with the Receipt and Voucher for such Payment.

LXXXII. Provided always, and be it enacted, That if on Appeal the Occupier of any Premises held under a Demise at

Rack Rent shall produce and show to the Commissioners the Lease, Tack, or Agreement in Writing, or shall prove by any lawful Evidence to be produced on his Part, in case there shall be no such Lease, Tack, or Agreement in Writing, the annual Amount of the Rent at which such Premises are let, it shall be lawful for the said Commissioners, in case such Rent hath been fixed by Agreement commencing within the Period of Seven Years mentioned in the said General Rule, and they shall be satisfied that such Lease, Tack, or Agreement doth express the full Consideration for the Demise under which such Occupier shall hold the same, or that the Rent bona fide paid by such Occupier for the same hath been duly shown to them in Evidence, and that such Demise is made wholly in consideration of such reserved Rent, without any Intention to conceal or diminish the annual Value of such Premises, or other fraudulent Intention whatever, to abate and deduct from such Assessment so much as in their Judgment will reduce the Rate to a just Rate on such Rent: Provided always, that if it shall appear to the said Commissioners that any Lands, Tenements, Hereditaments, or Heritages shall have been assessed at an annual Value less than the actual Rent at which the same shall be let, or (if not let) at less than the Rent at which the same might be let, it shall be lawful for the said Commissioners to enlarge and increase such Assessment to such Sum as a like Rate on such Rent would amount unto, as well with respect to the Rate on the Property as the Rate on the Occupation of such Lands, Tenements, Hereditaments, or Heritages.

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LXXXVIII. And he it enacted, That whenever by any Flood or Tempest Loss shall be sustained on the growing Crops, or on the Stock on Lands demised to a Tenant at a reserved Rent, without Fine or other Sum paid, given, or contracted for in lieu of a reserved Rent, or any Part thereof, or the said Lands, or any Part thereof, shall by such Flood or Tempest be rendered incapable of Cultivation for any Year, and it shall be proved on Oath to the Satisfaction of the Commissioners for General Purposes acting for the Division where the said Lands are situate, that the Owner of the said Lands hath in consideration of such Loss abated or agreed to abate to his Tenant the whole or any Proportion of the Rent reserved or payable by such Tenant for any Year of such Demise, it shall be lawful for the said Commissioners to abate in the Assessment made in respect of the Property in the said Lands for the same Year for which such Rent hath been abated, and to discharge therefrom the whole or the like Proportion of Duty as the said Owner shall appear on such Proof as aforesaid to have abated of or from the Rent reserved and made payable to him on such Demise ; and it shall also be lawful for the said Commissioners in every such Case to abate in the Assessment made in respect of the Occupation of the said Lands for the same Year, and to discharge therefrom the like Proportion of Duty as shall have been abated or discharged from the Assessment made in respect of the Property on the said Lands for the Cause aforesaid.

LXXXIV. And be it enacted. That whenever from the Cause aforesaid the like Loss shall be sustained on the Lands of any Infant, Idiot, Lunatic, or other Proprietor incapable of consenting to any Abatement in the Rent as aforesaid, being in the Occupation of any such Tenant as aforesaid, and the same shall be proved on Oath before the said Commissioners to their Satisfaction, it shall be lawful for them to abate in the Assessment made in respect of the Occupation of the said Lands, and to discharge the whole or any Part of the said Duty, and in proportion to the Loss so sustained, and to the Amount which the said Commissioners shall be of opinion would or ought to have been abated as aforesaid, if the said Lands had Foster Income Tax. - 63.

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belonged to a Proprietor of full Age and of sound Mind, and capable of such Consent as aforesaid.

LXXXV. And be it enacted. That whenever from the Cause aforesaid the like Loss shall be sustained on Lands in the Occupation of the Owner, and the same shall be proved on Oath before the said Commissioners to their Satisfaction, it shall be lawful for them to abate in the several Assessments made in respect of the Property in or Occupation of the said Lands, and to discharge the whole or any Part of the said respective Duties, and in proportion to the Loss so sustained, and to the Amount which the said Commissioners shall be of opinion would or ought to have been abated as aforesaid if the said Lands had been demised to a Tenant, and a proportionate Abatement had been made to such Tenant under the Circumstances of the said Loss.

LXXXVI. And be it enacted. That if any Person shall be guilty of making any false Claim for such Abatement as aforesaid, or shall be guilty of any Fraud or Contrivance in making such Claim, or in obtaining any such Abatement, or shall fraudulently or untruly declare the Amount or Value of such Loss, or the Amount or Value of any Abatement made or agreed to be made in the Rent of the Lands in his Occupation, on account of such Loss, with Intent fraudulently to obtain any such Abatement, he shall forfeit the Sum of Fifty Pounds, and Treble the Amount of Duty charged on him in respect of

the said Lands; and if the Owner of any such Lands, or any other Person whatever, shall aid, abet, or assist any Person charged to the said Duties in making such false or fraudulent Claim, or shall fraudulently or untruly declare the Amount or Value of any Abatement made or agreed to be made in the Pent of the said Lands or the Amount of such Loss, with Intent fraudulently to obtain for himself, or for his Tenant, or for the Owner or Tenant of the said Lands, any such Abatement as aforesaid, every such Owner or other Person aforesaid shall forfeit the Sum. of One hundred Pounds.

LXXXVII. And be it enacted. That the First Assessment to be made after the Fifth Day of April One thousand eight hundred and forty-two, of the Duties chargeable under either

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of the Schedules marked (A.) or (B.) of this Act, shall be and remain in force for the Space of Three Years, without requiring Eeturns from the Parties charged therein for the Second or Third Year of such Assessment, and without altering the Names of the Parties charged, notwithstanding a Change in the Occupation or Interest of or in the Premises charged in such Assessment may have happened ; and the like Sums shall be levied thereon for the Second and Third Years respectively as shall or ought to have been levied thereon for the First Year, and the Assessment shall be subject to the like Exemptions and Allowances for the Second and Third Years respectively as were granted for the First Year; and the Amount charged in such Assessment shall be paid by Four Instalments in each Year, on the Days and Times herein specified for Payment of such Instalments, subject nevertheless to be varied and altered in the following Cases; (videlicet,)

First. - If the Inspector or Surveyor shall find or discover that any Person hath been under-rated in such Assessment, or omitted to be charged therein for the First Year, or hath obtained an Exemption or Allowance for the First Year which ought not to be allowed for the Second or Third Year, it shall be lawful for such Inspector or Surveyor to surcharge such Assessment for the Second or Third Year, in like Manner in all respects as he is authorized to surcharge the Assessment under the like Circumstances for the First Year of Assessment, provided that such Surcharge shall be made in the single Duty, and no Increase shall be made thereon above the Rate of Duty hereby granted, unless the Commissioners shall be of opinion that the Assessment for the First Year was, in the Particular surcharged, deficient through the wilful Default or Neglect of the Party to be charged:

Second. - If any Person not chargeable in the First Year of Assessment shall become chargeable in the Second or Third' Year it shall be lawful for the Assessor, Inspector, or Surveyor to require the like Eeturns, and to proceed to the Assessment of such Person in like Manner for the Second or

Third Year, as if the whole Assessment of the Parish, Place,, or District had commenced in that Year:

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Third. — If any Person shall find himself aggrieved by the "Continuance of such Assessment for the Second or Third Year, by occasion of his being over-rated therein, he may appeal from the same in that Year on delivering Ten Days E'otice of such his Intention to the Inspector or Surveyor, together with a true and perfect Schedule of the annual Value of the Property charged on him for that Year, in like Manner as he might have appealed against the same Assessment under the like Circumstances for the First Year, and no Payment on such Assessment for the First or Second Year shall be construed to preclude such Appeal ; provided that for any vexatious Appeal without reasonable Cause it shall be lawful for the Commissioners to award reasonable Costs for the Attendance of the Inspector, Surveyor, or Assessor to be added to the Assessment and levied therevith for the Use of such Inspector, Surveyor, or Assessor, and v^hich shall be paid to them respectively in like Manner as any other Payments under this Act may be inade to them:

Fourth. — It shall be lawful for the respective Collectors to levy and gather the Assessment for the Second and Third Years respectively on the Occupiers for the Time being by the same Rate or Book which shall have i been delivered to them for the First Year, unless the Commissioners shall revoke the Appointment of the said Collectors, or shall alter or vary the Assessments, and deliver to them a new Rate or Book for the Second or Third Year:

Fifth. — The Duplicates of the Commissioners shall be made for each Year, and delivered to the proper Officer for Receipt and at the Head Office' for Stamps and Taxes, containing the like Particulars for the Second and Third Years respectively as are herein required for the First Year of Assessment, varying only the Amounts therein to be specified if the Case shall require the same; and all the Powers, Regulations, Matters, and Things contained in this Act for rectifying any Assessment, or 'increasing or diminishing the Duty according to Circumstances, ' or for levying the same, shall be in force for the Second and Third Years respectively, in respect of the Sums ,to be levied in those respective Years, and shall be applied in

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those respective Years, as fully and effectually as if the Assessment had been made for those Years respectively under the Directions and Eegulations of this Act.

LXXXVIII. And be it enacted. That the Duties hereby

granted, contained in the Schedule marked (C), shall be assessed and charged under the following Rules, which Rules shall be deemed and construed a Part of this Act, and to refer to the said last-mentioned Duties, as if the same had been inserted under a special Enactment.

SCHEDULE (0.) ,

Rules for assessing and charging the Duties under Schedule

(C.)

The said last-mentioned Duties shall be paid by the Persons and Corporations respectively intrusted with the Payment of the Annuities, Dividends and Shares of Annuities, therein charged, on behalf of the Persons, Corporations, Companies, or Societies entitled thereto, their Executors, Administrators, Successors, or Assigns, and shall be assessed by the Commissioners hereby authorized or appointed for those Purposes ; and shall extend to all public Annuities whatever payable in Great Britain out of any public Revenue in Great Britain or elsewhere, and, to all Annuities payable in Ireland out of the Revenue of the United Kingdom, to or for the Use or Benefit of any Person not resident in Ireland}'' and also to all Dividends and Shares of such Annuities respectively which shall become payable after the Fifth Day of April One thousand eight hundred and forty-two, except in the following Cases of Exemption from the said Duties ; viz. \

First. - The Stock, Dividends, or Interest of any Friendly Society legally established under any Act of Parliament relating to Friendly Societies; provided it shall appear by the Rules of any such Society deposited or to be deposited with the Commissioners for the Reduction of the National Debt, or

17 The phrase "and to all annuities land,," has been repealed by 37 & payable in Ireland", to and includ- 38 Vict., e. 96.
ing the words "nonresident in Ire-

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with the Trustees of any Savings Bank, that the Sums assured by any such Society to any Individual, or to any Person nominated by or to claim under him, shall not exceed the Sum of Two hundred Pounds, or the Amount of any Annuity or Annuities granted or to be granted by any such Society to any Individual, or to any Person nominated by or to claim under him, shall not exceed the Sum of Thirty Pounds per Annum: Provided also, that when any Property belonging to any such Society shall be invested in the public Securities in the Bank of England, the said last-mentioned Property shall be duly claimed and proved by any Trustee or Treasurer of any such Society, or by any Member thereof, before the said Commissioners for Special Purposes:

Second. — The Stock or Dividends of any Savings Bank established or to be established under the Provisions of an Act passed in the Ninth Year of the Keign of King George the Pourth, intituled An Act to consolidate and amend the Laws relating to Savings Banks, arising from Investments with the Commissioners for the Reduction of the National Debt; and also the Dividends or Interest payable by the Trustees of any Savings Bank upon any Funds therein deposited belonging to any Depositor or to any charitable Institution:

Third. — The Stock or Dividends of any Corporation, Fraternity, or Society of Persons, or of any Trust established for charitable Purposes only; or which, according to the Eules or Regulations established by Act of Parliament, Charter, Decree, Deed of Trust, or Will, shall be applicable by the said Corporation, Fraternity, or Society, or by any Trustee, to charitable Purposes only, and in so far as the same shall be applied to charitable Purposes only; or the Stock or Dividends in the Names of any Trustees applicable solely to the Repairs of any Cathedral, College, Church, or Chapel, or any Building used solely for the Purpose of Divine Worship, and in so far as the same shall be applied to such Purposes, provided the Application thereof to such Purposes shall be duly proved before the said Commissioners for Special Purposes by any Agent or Factor on the Behalf of any such Corporation, Fraternity, or Society, or by any of the Members or Trustees:

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Fourtli. — The Stock or Dividends transferred to the Accounts in the Books of the Bank of England in the Name or under the Description of the Lord High Treasurer of England or of the Commissioners of Her Majesty's *' Treasury, or the Commissioners for the Keduction of the National Debt, in pursuance of any Act or Acts of Parliament; provided that the Governor and Company of the Bank of England shall from Time to Time cause to be transmitted to the said Commissioners for Special Purposes an Account of the total Amount of Stock which shall have been transferred to the said respective Accounts, also the Payments to be made by the Commissioners for the Reduction of the National Debt on account of the Waterloo Subscription Funds:

Fifth. — The Stock or Dividends belonging to Her Majesty, in vsrhatever Name the same may stand in the Books of the Bank of England, and also the Stocks or Dividends of any accredited Minister of any Foreign State resident in Great Britain, provided the Property thereof shall, if standing in the Name of any Trustee, be duly proved before the said Commissioners for Special Purposes by such Trustee.

LXXXIX. And for the assessing and charging of the said Annuities payable to the Company of '^ the Bank of England and to the South Sea Company respectively, at the Receipt of the Exchequer as aforesaid, and the Profits attached thereto

respectively, and also for the assessing and charging of all Annuities payable by the Commissioners for Reduction of the National Debt, and the Dividends and Shares of all other Annuities, payable out of any public Revenue, which are or shall be intrusted for Payment to the Companies of the Bank of England and South Sea respectively; be it enacted. That the respective Companies, Corporations, and Commissioners having the Distribution or Payment of the said several Annuities, Dividends, and Shares shall from Time to Time, as often as the Payments thereon shall become due, deliver to the respective Commissioners, appointed for the Purpose of assessing

IS The words "Lord High Treasurer- repealed by 53 & 54 Vict., c. 51.
er of England or of the Commission-

ers of her Majesty's" and "the gov- 19 The words "the company of"
ernor and company of", have been are repealed by 53 & 34 Vict., c. 51.

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the Duties thereon as aforesaid, true and faithful Accounts in Writing, in Books to be provided for that Purpose, of the several Amounts of such Annuities and Profits attached to the same, which shall be paid to the said Companies respectively, in respect of their Corporate Stock, and of such Dividends and Shares of Annuities as shall be intrusted to any of such Companies, Corporations, or Commissioners, for Payment to the Persons, Corporations, and Companies entitled thereto, and the Amount of Duty chargeable thereon at the Rate before directed, without Deduction on any Pretence whatever, except as herein is allowed, distinguishing therein the separate Account of each Person, Corporation, Company, and Society entitled unto any Part, Dividend, or Share of such Annuities respectively, as the same shall stand in the Books of the said respective Companies, or at the said Exchequer, in such Manner as that the Part, Dividend, and Share of each Person, Corporation, Company, and Society, of or to such Annuities respectively, may be distinctly charged and assessed to the said Duty; and the said respective Commissioners shall from Time to Time make an Assessment of the Duty which shall appear to be chargeable on the Accounts so delivered to the best of their Judgment and Belief, and shall from Time to Time deliver the said Books of Assessments, signed by them respectively, to the said Commissioners for Special Purposes; and the said Commissioners for Special Purposes shall forthwith cause Two Certificates on Parchment to be made out, under their Hands and Seals, containing the total Amounts of Duty, and of the Annuities, Dividends, and Shares whereon the said Duty shall have been charged contained in each Assessment, together with the proper Title or Description of the Corporation, Company, or Persons having the Distribution or intrusted with the Payment of such Annuities, Dividends, and Shares respectively; and they shall transmit one of such Certificates to the re-

spective Commissioners for making such Assessments, and the other Certificate to the Head Office for Stamps and Taxes in England.

XC. And for the assessing and charging of the Annuities, Dividends, and Shares of Annuities payable by the Governor

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and Company of the Bank of Ireland out of the public Revenue of the United Kingdom to Persons not resident in Ireland, be it enacted, That in every Case in which Payment of any such Annuities, Dividends, and Shares of Annuities as last aforesaid shall be demanded or applied for by any Attorney, Agent, Trustee, or other Person for or on the Behalf or for the Use or Benefit of any Person not resident in Ireland, the Person demanding or applying for the Payment of such Annuities, Dividends, or Shares of Annuities, before receiving the same, shall (whether he shall be required to do so by the said Governor and Directors of the said Bank or not) deliver to the Cashier of the said Bank a Declaration, signed by such Applicant, containing a Statement of the Amount and Description of the Stock in respect of which such Annuities, Dividends, or Shares are payable, and the Name and Place of Abode of every Person for whom, or on whose Behalf, or for whose Use or Benefit, such Applicant requires the Payment thereof, and declaring whether or not such last-mentioned Person was resident in Ireland, within the Intent and Meaning of this Act, at the Time when such Annuities, Dividends, and Shares respectively became payable; and in every Case in which Payment of any such Annuities, Dividends, or Shares of Annuities shall be demanded or applied for by any Person for or on the Behalf of any other Person, under or by virtue of any Letter or Power of Attorney, or other delegated Authority, the said Governor and Directors, or the Cashier or other Officer of the said Bank, having the Payment of any such Annuities, Dividends, or Shares of Annuities, shall, before paying the same, require such Declaration and Statement to be made and delivered as hereinbefore directed; and if the Person demanding or applying for such Payment shall refuse to make or sign and deliver such Declaration and Statement on being required to make and deliver the same as aforesaid, the Person for whom or on whose Behalf he shall demand or apply for such Payment shall be deemed to be not resident in Ireland, and such Annuities, Dividends, or Shares of Annuities shall be charged

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accordingly with the Duties granted by this Act: Provided always, that no Person (other than a Member of either House of Parliament entitled to be exempted from the Duties of Assessed Taxes under the Provisions in that Behalf contained in the Acts relating to the said last-mentioned Duties) shall be

deemed to be resident in Ireland, within the Intent and Meaning of this Act, who shall have been absent from Ireland, at one Time or several Times, for a Period equal in the whole to Six Months or more during the Space of One Year immediately preceding the Day on which such Annuities, Dividends, and Shares shall respectively have become payable.^"

XCI. And be it enacted, That whenever it shall appear by any such Declaration or Statement as aforesaid that any such Annuities, Dividends, or Shares of Annuities are payable by the said Governor and Company of the Bank of Ireland, to or for the Use or Benefit of any Person not resident in Ireland, and also whenever any Person applying for Payment of any such Annuities, Dividends, or Shares of Annuities shall refuse to make or sign and deliver such Declaration and Statement, on being required to make and deliver the same as aforesaid, the Commissioners herein-before appointed for that Purpose shall assess and charge the Duties hereby granted upon and in respect of all such Annuities, Dividends, and Shares of Annuities, and shall make out and transmit their Certificates of such Assessments in like Manner as is herein-before provided with respect to the Assessments to be made by the Commissioners appointed for assessing and charging the Duties on Annuities payable out of the Revenue of the United Kingdom in England; and in all other Cases where any such Annuities, Dividends, or Shares of Annuities shall be payable by the said Governor and Company to or for the Use or Benefit of any Person not resident in Ireland, but which shall not be assessed and charged by the said Commissioners in the Manner herein-before directed, by reason of the Fact of such Person's non-residence not having been made to appear to them in manner aforesaid, such Annuities, Dividends, and Shares which have been re-

20 Repealed by 37 & 38 Vict., c. 96.

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received or become payable in the preceding Year shall be accounted for in Great Britain by the Person entitled thereto, or beneficially interested therein, and shall be charged and assessed under the Rules and Regulations of Schedule (D.) of this Act, whether the same shall be received in Great Britain or not.^^

XCII. And be it enacted, That if any Person shall receive of the Governor and Company of the Bank of Ireland any Annuity, Dividend, or Share of Annuity payable out of the public Revenue of the United Kingdom, for or on the Behalf of or for the Use or Benefit of any Person not resident in Ireland, without previously delivering to the Cashier of the said Bank the Declaration and Statement by this Act directed to be delivered in such Case, or if any Person shall make, sign, or deliver any Declaration or Statement which shall not truly set forth the Name and Place of Residence of the Person, and of every Person for whom, or on whose Behalf, or for whose

Use or Benefit, he shall apply for Payment of any such Annuity, Dividend, or Share of Annuity as aforesaid, the Person who shall neglect or omit to deliver such Declaration and Statement as aforesaid, or who shall make, sign, or deliver any untrue Declaration or Statement, shall be liable to the Payment to Her Majesty of Treble the Amount of the Duty chargeable on such Annuity, Dividend, or Share of Annuity; and if any Person shall wilfully and fraudulently omit to deliver such Declaration and Statement, or shall wilfully make, sign, or deliver any false Declaration or Statement, or shall make or practice any fraudulent Contrivance or Device whatever, with Intent to defraud Her Majesty of the Duty chargeable under this Act on any such Annuity, Dividend, or Share of Annuity as aforesaid, he shall forfeit the Sum of One hundred Pounds, over and above Treble the Amount of the said Duty.**

XCIII. And be it enacted. That the respective Corporations Companies, and Persons entitled unto such Annuities and Profits attached thereto, or intrusted with the Payment of the Annuities, Dividends, or Shares of such public Annuities as

21 Repealed by 37 & 38 Vict., c. 82 Repealed by 37 & 38 Vict, c v96. 96.

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are herein-before described, shall, on Notice of the Amount of each Assessment, from Time to Time to be made as aforesaid (which Notice shall be given from Time to Time, as and when the Annuities, Dividends, and Shares aforesaid shall become payable, and before Payment thereof), set apart and retain the Amount of Duty so assessed for the Purposes of this Act ;. and every such setting apart and retaining of the said Duties shall be deemed a Payment thereof by and on the Behalf of the Persons, Corporations, and Companies entitled unto the said Annuities, Dividends, and Shares respectively; and all Persons, Corporations, and Companies entitled to such Annuities or Profits attached thereto or to any Part thereof, or to such Dividends or Shares of Annuities as aforesaid, are hereby required, on Receipt of the Residue of the said Annuities, Profits, Dividends, and Shares, over and above the Duty so assessed, to allow such Payments in respect of the said Assessments;. and the Corporations and Persons having the Distribution of such Annuities, or intrusted with such Payments, shall be and are hereby acquitted and discharged of so much Money, as. if the same had actually been paid unto the Persons to whom such Annuities, Profits, Dividends, and Shares did or might, belong, or were by Law payable.

XCIV. And be it enacted, That all Monies so set apart at the Bank of England, the Bank of Ireland, and the South Sea. House respectively, and by the Commissioners for the Reduction of the National Debt, as before directed, shall be paid from Time to Time into the Account to be kept at the Bank of England with the Receiver General of Stamps and Taxes,

as herein-after directed, accompanied with a Certificate of the Amount of the Assessment under which the same shall be so paid, under the Hands of Two or more of the Commissioners making such Assessment; and the Governor and Company of the Bank of England shall also cause the Amount of such Assessment as shall from Time to Time be charged on the Trading Profits of the said Company to be paid into the said Account.

23 The words "the Bank of Ireland respectively", have been repealed by the Act of the 37 & 38 Vict., u. 96.

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XCV. Provided always, and be it enacted, That in respect of any of the Annuities, Dividends and Shares of Annuities, chargeable under Schedule (O.) by the respective Commissioners for those Purposes, it shall not be required of them to make an Assessment for any Amount or Payment, where the half-yearly Payment on such Annuities, Dividends, or Shares shall not amount to Fifty Shillings, but that the Annuities, Dividends, and Shares whereof the half-yearly Payment shall not amount to Fifty Shillings shall be accounted for and charged under the Third Case' of Schedule (D.) by which Profits of an uncertain annual Value are directed to be charged : Provided also, that no Person shall be required to return any Statement of the Profits of such Annuities, Dividends or Shares, the half-yearly Payment whereof shall amount to Fifty Shillings or more, and which are herein-before directed to be assessed in manner aforesaid, or be liable to any Penalty for not returning the same, but all such Dividends and Shares whereof the half-yearly Payment shall not amount to Fifty Shillings, and which shall be paid without such Assessment, shall be duly returned in the Manner before directed, under the Penalty before contained.

XCVI. And be it enacted. That every Person (other than the Governor and Company of the Bank of England, the Directors of the East India Company, and the Commissioners for the Reduction of the National Debt,) intrusted with the Payment of Annuities, or any Dividends or Shares of Annuities, payable out of the public Revenue of any Colony or Settlement belonging to the Crown of the United Kingdom, to any Persons, Corporations, or Companies in Great Britain, or acting therein as Agent, or in any other Character before described, shall, without further Notice or Demand thereof, deliver or cause to be delivered into the Head Office for Stamps and Taxes in England an Account in Writing containing their Names and Residences, and a Description of the Annuities, Dividends, and Shares intrusted to them for Payment, within One Calendar Month after the same shall have been required by public Notice in the London Gazette, and shall also, on Demand by the Inspector authorized for that Purpose by the

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Commissioners of Stamps and Taxes, deliver or cause to be delivered to him, for the Use of the said Commissioners for Special Purposes, true and perfect Accounts of the Amount of Annuities, Dividends, and Shares payable by them respectively; and the said Commissioners for Special Purposes shall make an Assessment thereon under Schedule (C) at the Rate before prescribed, subject to Diminution on occasion of any Exemptions to be allowed by the said Commissioners for Special Purposes, giving Notice of the Amount thereof to the respective Persons intrusted with such last-mentioned Payments, who shall respectively pay the Duty on the said Annuities, Dividends, and Shares, on behalf of the Persons, Corporations, and Companies entitled unto the same, out of the Monies in their Hands ; and they shall be acquitted of such Payments in like Manner, and the like Proceedings in all respects shall be had under the said Commissioners for Special Purposes, as are before directed in respect of Annuities payable out of the public Revenue of the United Kingdom: Provided always, that the Persons intrusted with such Payment shall from Time to Time pay the Duty so assessed thereon into the Bank of England, to the Account to be kept at the Bank of England as aforesaid with the Receiver General of Stamps and Taxes, and shall be answerable for such Payment, and which Duty so assessed shall, in default of such Payment, be recoverable against the Persons respectively intrusted with such Payments as other Duties charged on the Parties may be recovered against them; and if any Person intrusted with the Payment of any such last-mentioned Annuities, or any Dividends or Shares thereof, in the Manner herein mentioned, or acting therein as Agent, or in any other Character herein described, shall neglect or refuse to deliver an Account of his Name and Residence in the Manner herein directed, or, after Demand, shall neglect or refuse to deliver an Account as aforesaid of the Amount of such Annuities, Dividends, and Shares as he is intrusted with the Payment of, or in the Payment of which he shall act as Agent, or in any other Character herein described, he shall forfeit the Sum of One hundred Pounds, over and above the Duty chargeable on such Annuities, Shares, or Dividends.

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XCVII. And be it enacted, That any Interest payable out of the public Revenue on Securities issued or to be issued at the Exchequer or other public Office, by whatever Names such Securities shall be called, shall be charged to the said Duties under the Rules contained in Schedule (C.) by the Commissioners for assessing the Profits of Offices in the said Exchequer or other Office aforesaid at which the same shall be made payable, and the Interest payable by the East India Company on the Bonds issued or to be issued by them shall be charged to the said Duties under the like Rules by the Commissioners herein-before appointed for that Purpose, which said

Commissioners respectively shall execute this Act, in relation to the Profits arising from such Securities and Bonds as aforesaid, in like Manner as the Commissioners appointed by this Act are empowered to assess the Profits arising from Annuities payable out of the public Revenue in other Cases ; and the said Commissioners respectively hereby authorized to execute this Act in relation to such Securities and Bonds as aforesaid shall appoint Assessors and Collectors of the said Duties arising from such Securities and Bonds from and amongst the Officers intrusted with the Payment or Discharge of such Securities and Bonds, who shall respectively at the Time of Payment or Discharge thereof compute the Duty thereon, and after such Computation shall enter the same in a Certificate of Assessment, and certify the same to the proper Officer appointed for the Payment or Discharge of such Securities and Bonds, which Officer is hereby empowered to stop and detain the said Duty, and to pay the same into the Bank of England to the Credit of the Receiver General of Stamps and Taxes in discharge of such Assessment; and every Person receiving or purchasing any such Security or Bond in circulation, with current Interest thereon, shall be entitled and is hereby empowered to deduct from such Interest the Proportion of Duty which will become chargeable thereon, in like Manner and under the like Powers and Penalties as may be done in other Cases of Payment of Interest, and as if such current Interest were then due and charged to the said Duty ; and the like Computation and Assessment shall be made whenever a new Se-

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curity or Bond shall be issued in discharge of any former Security or Bond, with Interest, or in discharge of Interest due on any former Security or Bond ; and the Person receiving such new Security or Bond in exchange for any former Security or Bond, with Interest, or for such Interest, shall pay to the proper Officer at the Time of receiving such new Security or Bond the full Duty computed on the Interest payable on the said former Security or Bond.

XCVIII. Provided always, and be it enacted. That all Claims of Exemption under any of the Rules contained in Schedule (C.) from the said Duties on Annuities, Dividends and Shares of Annuities, payable out of the Revenue of the United Kingdom, shall be made to the Commissioners for Special Purposes at the Head Office for Stamps and Taxes in England, according to the following Rules; videlicet.

First. — Every Claim shall be made in Writing, in such Form as the Commissioners of Stamps and Taxes shall direct, and the said Commissioners for Special Purposes shall require the same to be verified on the Affidavit of every such Person as they shall think necessary, such Affidavit to be made as before directed in all Cases cognizable before the said Commissioners, and they shall have Authority to demand and require, from every such Person as they shall think proper to be

examined touching such Claim, true Answers upon Oath, to be made as before directed, to all such Questions as they shall think material in such Claim:

Second. — Whenever the Commissioners for Special Purposes shall have allowed any such Exemption, they shall give an Order for Payment of the Sums retained for the Duties on such Annuities, Dividends and Shares, in respect of which they shall have allowed such Exemption, to the respective Claimants, or to the Attornies or Agents who shall have been authorized to receive the said Annuities, Dividends and Shares, on behalf of the said Claimants; and such Payment shall be made in like Manner as is herein-before provided with respect to Allowances to be granted under ITumber V. of Schedule (A.) of this Act.

XCIX. And be it enacted, That if any Person shall, with

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Intent to defraud Her Majesty, falsely or fraudulently make any Claim to be exempted, either in his own Behalf or any other, from the Duty charged on such Annuities, or any Dividends or Shares thereof, contrary to the Intent of this Act, every such Person shall forfeit the Sum of One hundred Pounds, and if such Claim shall be made by any Person in his own Behalf he shall moreover be liable to be assessed in Treble the Duty to be charged on the said Annuities and Shares.

C. And be it enacted. That the Duties hereby granted, contained in the Schedule marked (D.), shall be assessed and charged under the following Pules, which Pules shall be deemed and construed to be a Part of this Act, and to refer to the said last-mentioned Duties, as if the same had been inserted under a special Enactment.

Schedule (D.)

The said last-mentioned Duties shall extend to every Description of Property or Profits which shall not be contained in either of the said Schedules (A.), (B.), or (C), and to every Description of Employment of Profit not contained in Schedule (E.), and not specially exempted from the said respective Duties, and shall be charged annually on and paid by the Persons, Bodies Politic or Corporate, Fraternities, Fellowships, Companies, or Societies, whether Corporate or not Corporate, receiving or entitled unto the same, their Executors, Administrators, Successors, and Assigns respectively.

Rules for ascertaining the said last-mentioned Duties in the particular Cases herein mentioned.

First Case. — Duties to be charged in respect of any Trade, Manufacture, Adventure, or Concern in the Nature of Trade,

not contained in any other Schedule of this Act.

Pules.

First. — The Duty to be charged in respect thereof shall be computed on a Sum not less than the full Amount of the Bal-Foster Income Tax. — 64.

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ance of the Profits or Gains of such Trade, Manufacture, Adventure, or Concern upon a fair and just Average of Three Years, ending on such Day of the Year immediately preceding the Year of Assessment on vs'hich the Accounts of the said Trade, Manufacture, Adventure, or Concern shall have been usually made up, or on the Fifth Day of April preceding the Year of Assessment, and shall be assessed, charged, and paid without other Deduction than is herein-after allowed: Provided always, that in Cases where the Trade, Manufacture, Adventure, or Concern shall have been set up and commenced within the said Period of Three Years, the Computation shall be made for One Year on the Average of the Balance of the Profits and Gains from the Period of first setting up the same: Provided also, that in Cases where the Trade, Manufacture, Adventure, or Concern shall have been set up and commenced within the Year of Assessment, the Computation shall be made according to the Pule in the Sixth Case of this Schedule :

Second. — The said Duty shall extend to every Person, Body Politic or Corporate, Fraternity, Fellowship, Company, or Society, and to every Art, Mystery, Adventure, or Concern carried on by them respectively, in Great Britain or elsewhere, as aforesaid; except always such Adventures or Concerns on or about Lands, Tenements, Hereditaments, or Heritages as are mentioned in Schedule (A.), and directed to be therein charged :

Third. — In estimating the Balance of Profits and Gains chargeable under Schedule (D.), or for the Purpose of assessing the Duty thereon, no Sum shall be set against or deducted from, or allowed to be set against or deducted from, such Profits or Gains, on account of any Sum expended for Repairs of Premises occupied for the Purpose of such Trade, Manufacture, Adventure, or Concern, nor for any Sum expended for the Supply or Repairs or Alterations of any Implements, Utensils, or Articles employed for the Purpose of such Trade, Manufacture, Adventure, or Concern, beyond the Sum usually expended for such Purposes according to an Average of Three Years preceding the Year in which such Assessment shall be

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made; nor on account of Loss not connected with or arising out of such Trade, Manufacture, Adventure, or Concern; nor on account of any Capital withdrawn therefrom; nor for any Sum employed or intended to be employed as Capital in such Trade, Manufacture, Adventure, or Concern; nor for any Capital employed in Improvement of Premises occupied for the Purposes of such Trade, Manufacture, Adventure, or Concern; nor on account or under Pretence of any Interest which might have been made on such Sums if laid out at Interest; nor for any Debts, except bad Debts proved to be such to the Satisfaction of the Commissioners respectively; nor for any average Loss beyond the actual Amount of Loss after Adjustment; nor for any Sum recoverable under an Insurance or Contract of Indemnity:

Fourth. — In estimating the Amount of the Profits and Gains arising as aforesaid no Deduction shall be made on account of any annual Interest, or any Annuity or other annual Payment, payable out of such Profits or Gains.

Second Case. — The Duty to be charged in respect of Professions, Employments, or Vocations, not contained in any other Schedule of this Act.

EULES.

First. — The said Duty on Employments shall be construed to extend to every Employment by Eetainer in any Character whatever, whether such Eetainer shall be annual, or for a longer or shorter Period; and to all Profits and Earnings of whatever Value, subject only to such Exemptions as are hereinafter granted:

Second. — The Duty to be charged shall be computed at a Sum not less than the full Amount of the Balance of the Profits, Gains, and Emoluments of such Professions, Employments or Vocations (after making such Deductions, and no other as by this Act are allowed,) within the preceding Year,** end-

84 The words "within the preceding year" have been repealed, at least by implication, by the Income Tax Act of 1853, 16 & 17 Vict., c. three years.

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ing as in the First Case, to be paid on the actual Amount of such Profits or Gains, without any Deduction, subject to the like Provisions as are made in the First Case in respect of the Period of Average, in the Cases of setting up and commencing such Profession, Employment, or Vocation within the Period herein limited:

Third.— The Third and Fourth Rules in the First Case shall also extend to the Profits arising under the Second Case, as far as they are applicable.

Bids applying to both the preceding Cases.

First. — In estimating the Balance of the Profits or Gains to be charged according to either of the First or Second Cases, no Sum shall be set against or deducted from, or allowed to be set against or deducted from such Profits or Gains, for any Disbursements or Expenses whatever, not being Money wholly and exclusively laid out or expended for the Purposes of such Trade, Manufacture, Adventure, or Concern, or of such Profession, Employment, or Vocation; nor for any Disbursements or Expenses of Maintenance of the Parties, their Families or Establishments; nor for the Rent or Value of any Dwelling House or domestic Offices, or any Part of such Dwelling House or domestic Offices, except such Part thereof as may be used for the Purposes of such Trade or Concern, not exceeding the Proportion of the said Rent or Value herein-after mentioned; nor for any Sum expended in any other domestic or private Purposes, distinct from the Purposes of such Trade, Manufacture, Adventure, or Concern, or of such Profession, Employment, or Vocation :

Second. — The Computation of the Duty to be charged in respect of any Trade, Manufacture, Adventure, or Concern, or any Profession, whether carried on by any Person singly or by any One or more Persons jointly, or by any Corporation, Company, Fraternity, or Society, shall be made exclusive of the Profits or Gains arising from Lands, Tenements, or Hereditaments occupied for the Purpose of such Profession, Trade, Manufacture, Adventure, or Concern:

Third. — The Computation of Duty arising in respect of any

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Trade, Manufacture, Adventure, or Concern, or any Profession, carried on by Two or more Persons jointly, shall be made and stated jointly and in one Sum, and separately and distinctly from any other Duty chargeable on the same Persons, or either or any of them; and the Return of the Partner who shall be first named in the Deed, Instrument, or other Agreement of Copartnership (or where there shall be no such Deed, Instrument, or Agreement, then of the Partner who shall be named singly, or with Precedence to the other Partner or Partners, in the usual Name, Style, or Firm of such Copartnership, or where such precedent Partner shall not be an acting Partner, then of the precedent acting Partner,) and who shall be resident in Great Britain, (and who is hereby required, under the Penalty herein contained for Default in making any Return, required by this Act, to make such Return on behalf of himself and the other Partner or Partners whose Names and Resi-

dences shall also be declared in such Return,) shall be sufficient Authority to charge such Partners jointly: Provided always, that where no such Partner shall be resident in Great Britain^ then the Statement shall be prepared and delivered by their Agent, Manager, or Factor resident in Great Britain, jointly for such Partners, and such joint Assessment shall be made in the Partnership Name, Stile, Firm, or Description; and no separate Statement shall be allowed in any Case of Partnership, except for the Purpose of the Partners separately claiming an Exemption as herein directed, or of accounting for separate Concerns; provided that if any Partner being entitled to Exemption shall declare the Proportion of his Share in such Partnership, Trade, Profession, or Concern, in order to a separate Assessment for the above Purpose, it shall be lawful to charge such Partner separately; but if no such Claim be made, then such Assessment shall be made jointly, according to the Amount, of the Profits and Gainc of such Partnership.^* Provided also,, that any joint Partner in such Trade, Profession, or Concern,

85 The words beginning "except been repealed by the Finance Act of for the purpose of the partners sep- 1907, 7 Edw. VII, c. 13, § 30 (,1) arately," to and including "profits and third schedule thereto, and gains of such partnership," have

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which shall have been already returned by such precedent Partner as aforesaid, may return his l^ame and Place of Abode, and that he is such Partner, without returning the Amount of Duty payable in respect thereof, unless the Commissioners respectively shall think proper to require a further Return, in which Case it shall be lawful for such Commissioners to require from every such Partner the like Return, and the like Information and Evidence, as they are hereby entitled to require from the precedent Partner:

Fourth. - If amongst any Persons engaged in any Trade, Manufacture, Adventure, or Concern, or in any Profession, in Partnership together, any Change shall take place in any such Partnership, either by Death, or Dissolution of Partnership as to all or any of the Partners, or by admitting any other Partner therein, before the Time of making the Assessment, or within the Period for which the Assessment ought to be made under this Act, or if any Person shall have succeeded to any Trade, Manufacture, Adventure, or Concern, or any Profession, within such respective Periods as aforesaid, the Duty payable in respect of such Partnership, or any of such Partners, or any Person succeeding to such Profession, Trade, Manufacture, Adventure, or Concern, shall be computed and ascertained according to the Profits and Gains of such Business derived during the respective Periods herein mentioned, notwithstanding such Change therein or Succession to such Business as aforesaid, unless such Partners, or such Person succeeding to such Busi-

ness as aforesaid, shall prove, to the Satisfaction of the respective Commissioners, that the Profits and Gains of such Business have fallen short or will fall short from some specific Cause, to be alleged to them, since such Change or Succession took place, or by reason thereof :

Fifth. - Every Statement of Profits to be charged under this Schedule shall include every Source so chargeable on the Person delivering the same on his own Account, or on account of any other Person, and every Person shall be chargeable in respect of the whole of such Duties in one and the same Division, and by the same Commissioners, (except in Cases where the same Person shall be engaged in different Partnerships, or the same

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Person shall be engaged in different Concerns relating to Trade or Manufacture in divers Places, in each of which Cases a separate Assessment shall be made in respect of each Concern at the Place where such Concern if singly carried on ought to be charged as herein directed,) and every such Statement on the Behalf of any other Person for which such Person shall be chargeable as acting in any of the Characters before described, or on the Behalf of any Corporation, Fellowship, Fraternity, Company, or Society, shall include every Source chargeable as last aforesaid, and shall be delivered in that Division where such Person, Corporation, Fellowship, Fraternity, Company, or Society would be chargeable if acting on his or their own Behalf.

Third Case. - The Duty to be charged in respect of Profits of an uncertain annual Value not charged in Schedule (A.)

First. - The Duty to be charged in respect thereof shall be computed at a Sum not less than the full Amount of the Profits or Gains arising therefrom within the preceding Year, ending as in the First Case, to be paid on the actual Amount of such Profits or Gains, without any Deduction :

Second. - The Profits on all Securities bearing Interest payable out of the public Revenue (except Securities before directed to be charged under the Rules of Schedule (C), and on all Discounts, and on all Interest of Money, not being annual Interest, payable or paid by any Person whatever, shall be charged according to the preceding Rule in this Case:

Third. - Whenever the Commissioners shall, on Examination, find that any Lands occupied by a Dealer in Cattle, or by a Dealer in or Seller of Milk, (which Lands shall have been estimated and charged on the Rent or annual Value,) are not sufficient for the Keep and Sustenance of the Cattle brought on the said Lands, so that the Rent or annual Value of the said Lands cannot afford a just Estimate of the Profits of such Dealer, it shall be lawful for the said Commissioners to require a Return of such Profits, and to charge such further Sum there-

on as, together with the Charge in respect of the Occupation of the said Lands, shall make up the full Sum wherewith such

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Trader ought to be charged in respect of the like Amount of Profits charged according to the First Rule in this Case.

Fourth Case. — The Duty to be charged in respect of Interest arising from Securities in Ireland or in the British Plantations in America, or in any other of Her Majesty's Dominions out of Great Britain, and Foreign Securities, except such Annuities, Dividends, and Shares as are directed to be charged under Schedule (C.) of this Act.

The Duty to be charged in respect thereof shall be computed on a Sum not less than the full Amount of the Sums (so far as the same can be computed) which have been or will be received in Great Britain in the current Year, without any Deduction or Abatement.

Fifth Case. — The Duty to be charged in respect of Possessions in Ireland, or in the British Plantations in America, or in any other of Her Majesty's Dominions out of Great Britain, and Foreign Possessions.

The Duty to be charged in respect thereof shall be computed on a Sum not less than the full Amount of the actual Sums annually received in Great Britain, either for Remittances from thence payable in Great Britain, or from Property imported from thence into Great Britain, or from Money or Value received in Great Britain, and arising from Property which shall not have been imported into Great Britain, or from Money or Value so received on Credit or on Account in respect of such Remittances, Property, Money, or Value brought or to be brought into Great Britain, computing the same on an Average of the Three preceding Years, as directed in the First Case, without other Deduction or Abatement than is herein-before allowed in such Case.

Sixth Case. — The Duty to be charged in respect of any annual Profits or Gains not falling under any of the foregoing Rules, and not charged by virtue of any of the other Schedules contained in this Act.

The Nature of such Profits or Gains, and the Grounds on which the Amount thereof shall have been computed, and the Average taken thereon (if any), shall be stated to the Commissioners, and the Computation shall be made either on the

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Amount of the full Value of the Profits and Gains received

annually, or according to an Average of such Period greater or less than One Year, as the Case may require, and as shall be directed by the said Commissioners; and such Statement and Computation shall be made to the best of the Knowledge and Belief of the Person in receipt of the same or entitled thereto.

CI. Provided always, and be it enacted, That nothing herein contained shall be construed to restrain any Person carrying on, either solely or in Partnership, Two or more distinct Trades, Manufacturers, Adventures, or Concerns in the Nature of Trade, the Profits whereof are made chargeable under the Rules of Schedule (D.), from deducting or setting against the Profits required in One or more of the said Concerns the Excess of the Loss sustained in any other of the said Concerns over and above the Profits thereof, in such Manner as may be done under this Act where a Loss shall be deducted from the Profits of the same Concern, or to restrain any of such Persons from making separate Statements thereof, or to restrain any such Person renting a Dwelling House, Part whereof shall be used by him for the Purposes of any Trade or Concern or any Profession hereby charged, from deducting or setting off from the Profits of such Trade, Concern, or Profession such Sum not exceeding Two Third Parts of the Rent paid for such Dwelling House, with the Appurtenances, as the said respective Commissioners shall on due Consideration allow; and the respective Commissioners shall have Authority to allow such Deductions as in other Cases, and to assess such Person accordingly.

OIL And be it enacted. That upon all Annuities, yearly-Interest of Money, or other annual Payments, whether such Payments shall be payable within or out of Great Britain, either as a Charge on any Property of the Person paying the same by virtue of any Deed or Will or otherwise, or as a Reservation thereout, or as a personal Debt or Obligation by virtue of any Contract, or whether the same shall be received and payable-half-yearly or at any shorter or more distant Periods, there shall be charged for every Twenty Shillings of the annual Amount thereof the Sum of Seven-pence, without Deduction, according to and under and subject to the Provisions by which.

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the Duty in the Third Case of Schedule (D.) may be charged; provided that in every Case where the same shall be payable out of Profits or Gains brought into charge by virtue of this Act no Assessment shall be made upon the Person entitled to such Annuity, Interest, or other annual Payment, but the whole of such Profits or Gains shall be charged with Duty on the Person liable to such annual Payment, without distinguishing such annual Payment, and the Person so liable to make such annual Payment, whether out of the Profits or Gains charged with Duty, or out of any annual Payment liable to Deduction, or from which a Deduction hath been made, shall be authorized to deduct out of such annual Payment at the Rate of Seven-pence for every Twenty Shillings of the Amount thereof, and

the Person to whom such Payment liable to Deduction is to be made shall allow such Deduction, at the full Rate of Duty hereby directed to be charged, upon the Receipt of the Residue of such Money, and under the Penalty herein-after contained, and the Person charged to the said Duties having made such Deduction shall be acquitted and discharged of so much Money as such Deduction shall amount unto, as if the Amount thereof had actually been paid unto the Person to whom such Payment shall have been due and payable ; but in every Case where any annual Payment as aforesaid shall, by reason of the same being charged on any Property or Security in Ireland, or in the British Plantations, or in any other of Her Majesty's Dominions, or on any Foreign Property or Foreign Security, or otherwise, be received or receivable without any such Deduction as aforesaid, and in every Case where any such Payment shall be made from Profits or Gains not charged by this Act, or where any Interest of Money shall not be reserved or charged or payable for the Period of One Year, then and in every such Case there shall be charged upon such Interest, Annuity, or other annual Payment as aforesaid the Duty before mentioned, according to and under and subject to the several and respective Provisions by which the Duty in the Third Case of Schedule (D.) may be charged: Provided always, that where any Creditor on any Rates or Assessments not chargeable by this Act as Profits shall be entitled to such Interest, it shall

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be lawful to charge the proper Officer having the Management of the Accounts with the Duty payable on such Interest, and every such Officer shall be answerable for doing all Acts, Matters, and Things necessary to a due Assessment of the said Duties, and Payment thereof, as if such Rates or Assessments were Profits chargeable under this Act, and such Officer shall be in like Manner indemnified for all such Acts, as if the said Rates and Assessments were chargeable.

And be it enacted, That if any Person shall refuse to allow any Deduction authorized to be made by this Act out of any Payment of annual Interest of Money lent, or other Debt bearing annual Interest, whether the same be secured by Mortgage or otherwise, he shall forfeit for every such Offence Treble the Value of such Principal Money or Debt ; and if any Person shall refuse to allow any Deduction authorized to be made by this Act out of any Rent or other annual Payment mentioned in the Ninth and Tenth Clauses of No. IV. Schedule (A.), or out of any Annuity or annual Payment mentioned in Schedules (C.) or (E.), or in the next preceding Clause, save such annual Interest as aforesaid, every such Person shall forfeit the Sum of Fifty Pounds; and all Contracts, Covenants, and Agreements made or entered into, or to be made or entered into, for Payment of any Interest, Rent, or other annual Payment aforesaid, in full, without allowing such Deduction as aforesaid, shall be utterly void.

CIV. And be it enacted. That whenever it shall be proved, to the Satisfaction of the said respective Commissioners acting in the District where any Person making the Application shall reside, that any Interest of Money, Annuity, or other annual Payment shall be annually paid out of the Profits and Gains bond fide accounted for and charged by virtue of this Act at the Estate and according to the Rules specified in Schedule (D.), without any Deduction on account thereof, it shall be lawful for such Commissioners to grant a Certificate thereof, under the Hands of any Two of them, in such Form as shall be provided under the Authority of this Act, which Certificate shall entitle the Person so assessed, upon Payment of such Interest, Annuity, or other annual Payment, to abate and deduct so much there-

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of as a like Rate on such Interest, Annuity, or other annual Payment would amount unto ; and every Person to whom such Interest, Annuity, or other annual Payment shall be paid shall allow such Deductions and Payments, upon Receipt of the Residue of such Interest, Annuity, or other annual Payment, and the Person paying the same shall be acquitted and discharged of so much Money as a like Rate thereon would amount unto, as if the same had actually been paid unto the Person to whom such Interest, Annuity, or other annual Payment shall have been due and payable; provided no such Certificate shall be required where such Payments are to be made out of the Profits or Gains arising from Lands, Tenements, Hereditaments, or Heritages, as before mentioned, or of any Office or Employment of Profit, or out of any Annuity, Pension, Stipend, or any Dividend or Share in such public Annuities as are herein mentioned, but such Deductions may be made without having obtained such Certificate.

CV. Provided always, and be it enacted, That any Corporation, Fraternity, or Society of Persons, and any Trustee for charitable Purposes only, shall be entitled to the same Exemption in respect of any yearly Interest or other annual Payment chargeable under Schedule (D.) of this Act, in so far as the same shall be applied to charitable Purposes only, as is hereinbefore granted to such Corporation, Fraternity, Society, and Trustee respectively in respect of any Stock or Dividends chargeable under Schedule (C.) of this Act, and applied to the like Purposes; and such Exemption shall be allowed by the Commissioners for Special Purposes, on due Proof before them, and the Amount of the Duties which shall have been paid by such Corporation, Fraternity, Society or Trustee in respect of such Interest or yearly Payment, either by Deduction from the same or otherwise, shall be repaid, under the Order of the said Commissioners for Special Purposes, in the Manner hereinbefore provided for the Repayment of Sums allowed by them, in pursuance of any Exemption contained in the said Schedule (C.)

CVI. And be it enacted. That every Person being a House-

holder (except Persons engaged in any Trade, Manufacture,

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Adventure, or Concern, or any Profession, Employment, or Vocation,) shall be charged to the said Duties contained in Schedule (D.) by Commissioners acting for the Parish or Place where his Dwelling House shall be situate; and every Person engaged in any Trade, Manufacture, Adventure, or Concern, or any Profession, Employment, or Vocation, shall be chargeable by the respective Commissioners acting for the Parish or Place where such Trade, Manufacture, Adventure, or Concern shall be carried on, or where such Profession, Employment, or Vocation shall be exercised, whether such Trade, Manufacture, Adventure, or Concern shall be carried on, or such Profession, Employment, or Vocation shall be exercised, wholly or in part only in Great Britain, or whether such Person shall be engaged in One only or more of such Concerns, except where the same Person shall be engaged in different Concerns, and a Loss from one Concern shall be set off or deducted from the Profits of another Concern; and every Person not being a Householder, nor engaged in any Trade, Manufacture, , Adventure, or Concern, nor in any Profession, Employment, or Vocation, who shall have any Place of ordinary Residence, ^hall be charged by the Commissioners acting for the Parish or Place where he shall ordinarily reside; and every Person not herein-before described shall be charged by the Commissioners acting for the Parish or Place where such Person shall reside at the Time of beginning to execute this Act in each Year by giving such general Notices as are herein mentioned, or shall first come to reside after the Time for giving such general Notices; and every such Charge made in such Parish or Place shall be valid and effecutal, notwithstanding the subsequent Removal of the Person so charged from the Parish or Place ; and in order that the Place where the said last-mentioned Duties are to be charged may be ascertained, every Person is hereby required, on the Delivery of any List or Statement as aforesaid, at the same Time to deliver a Declaration in Writing signed by him declaring in what Place he is chargeable, and whether he is engaged in any Trade, Manufacture, Adventure, or Concern, or in any Profession, Employment, or Vocation, or not, and if he shall be so engaged in any Trade, Manufacture, Adventure, or

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Concern, or any Profession, Employment, or Vocation, also' declaring the Place where the same shall be carried on or exercised, and every particular Concern, Profession, or Employment in which he shall be engaged in such Place in Great Britain, whether wholly in Great Britain, or in part only, as aforesaid; provided that where any Trade shall be carried on in Great Britain by the Manufacture of Goods, Wares, or Merchandize, the Assessment thereon shall be at the Place of Man-

ufacture, although the Sales of such Goods, Wares, or Merchandise shall be elsewhere: Provided always, that every Person not being engaged in any Trade, Manufacture, Adventure, or Concern, or in any Profession, Employment, or Vocation, having Two or more Houses or Places at which he shall be ordinarily resident, shall be charged at such of the Parishes or Places wherein the Dwelling House is situate in which he shall be ordinarily resident at the Time of beginning to execute this Act in each Year in manner aforesaid, or in which he shall first come ordinarily to reside after giving such general Notices as aforesaid: Provided always, that the Duty to be assessed by virtue of this Act, in respect of the Profits or Gains arising from Possessions or Securities in Ireland, upon any Person resident in Great Britain as aforesaid, may be stated to and assessed by the respective Commissioners acting for the respective Places where the Persons receiving or entitled unto the same shall reside; and if the same shall be received by any Agent, Attorney, or Factor, such Agent, Attorney, or Factor shall make such Return of the Name and Place of Abode of the Person entitled thereto as is herein required to be made of other Persons of full Age resident in Great Britain, and if the Person entitled thereto shall not be of full Age, or not resident in Great Britain, such Agent, Attorney, or Factor shall be answerable for doing all Acts, Matters, and Things required by this Act to be done in order to the assessing such Profits to the said last-mentioned Duties, and paying the same.*®

CVII. Provided always, and be it enacted, That Persons holding Offices in Ireland, and residing in Great Britain, and

26 The concluding proviso, which duty to be assessed", has been re- begins "Provided always, that the repealed by 37 & 38 Vict., c. 96.

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Persons usually residing in Ireland, and serving in Parliament, who shall or may be exempted from the Duties of Assessed Taxes under the Provisions in that Behalf contained in the Acts relating to the said last-mentioned Duties, shall, under the like Circumstances under which such Exemptions are to be claimed, be chargeable to the Duties under this Act in like Manner only as Subjects of Her Majesty residing out of Great Britain.^

CVIII. And be it enacted, That the Duty to be assessed by virtue of this Act in respect of the Profits or Gains arising from Foreign Possessions or Foreign Securities, or in the British Plantations in America, or in any other of Her Majesty's Dominions, may be stated to and assessed by the respective Commissioners acting for the respective Places herein-after mentioned, videlicet, London, Bristol, Liverpool and Glasgow, according to the Regulations herein-after mentioned, as if such Duty had been assessed upon the Profits or Gains arising from Trade or Manufacture carried on in such Places respectively; and such Duty shall be stated to and assessed and charged by the

Commissioners acting for such of the said Places at or nearest to which such Property shall have been first imported into Great Britain, or at or nearest to which the Person who shall have received such Remittances, Money, or Value from thence, and arising from Property not imported as aforesaid, shall reside ; and in default of the Owner or Proprietor thereof being charged, the Trustee, Agent, or Receiver of such Profits or Gains shall be charged for the same, and shall be answerable for the doing all such Acts, Matters, and Things as shall be required by this Act to be done, in order to the assessing such Profits to the Duties granted by this Act, and paying the same, whether the Person to whom the said Profits belong shall be resident in Great Britain or not : Provided always, that whenever the Produce or the Profits or Gains arising from such Possessions or Securities as last aforesaid shall have been imported partly into the Port of London, and partly into any of the Outports of Bristol, Liverpool, or Glasgow, or shall have

27 Repealed by 37 & 38 Vict., c. 96.

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been received by any Person partly in the City of London and partly in any of the said Outports, within the Period of making Tip the Account on which the Duty is chargeable by this Act according to the Rules herein contained, the whole of the Duty chargeable in respect of such Produce, Profits, or Gains so imported or received shall be assessed and charged by the Commissioners acting for the said City of London, and not elsewhere, and as if the whole of the said Produce or the said Profits or Gains arising within the said Period had been imported into or received in London; and whenever such Produce or Profits or Gains arising as aforesaid shall have been within such Period wholly imported into or received at the said Outports of Bristol, Liverpool, and Glasgow, and different Parts thereof shall have been imported into or received at Two or more of such Outports, the Duty chargeable thereon shall be assessed and charged at One of such Places only, and in One Account, and at such of the said Places at which the major Part in Value of such Produce or Profits or Gains shall have been so imported or received; provided that the Statements of such Produce, Profits, or Gains shall be delivered to the Commissioners acting for each Place at which any Part of the said Produce or Profits or Gains shall have been so imported or received, and transmitted by the respective Commissioners to the Head Office for Stamps and Taxes in England, and the Commissioners of Stamps and Taxes shall cause all such Statements to be sent to the Commissioners acting for the Place where the Duty thereon shall appear by such Statements to be chargeable according to this Act, who shall accordingly assess the same in One Sum.

CIX. And be it enacted. That the Profits arising from the Docks called the London Docks, the East and West India Docks, and Saint Katherine Dock respectively, situate in the County

of Middlesex, shall be assessed by the Commissioners acting for the City of London.

ex. And be it enacted. That every Person having Two Eesidences, or carrying on any Trade or exercising any Profession in different Parishes, Places, or in any Place different from the Place of his ordinary Residence, shall, if required by the respec-

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tive Commissioners, deliver at each such Parish or Place the like Lists, Declaration?, and Statements as he is hereby required to deliver in the Parish or Place where such Person ought to be charged, but shall not be liable to any Double Charge by reason thereof; and all Lists, Declarations, and Statements containing the Amount of Profits chargeable under Schedule (D.) may be delivered to the respective Persons and in manner herein directed, sealed up, if superscribed with the Name and Place of Abode of, or Place of exercising the Profession or carrying on Trade by, the Person by whom the same shall have been made.

CXI. And be it enacted, That all Statements of Profits and Oains described in Schedule (D.) (except Statements whereon Assessments are to be made by the Commissioners for Special Purposes, as herein-after authorized,) shall be laid before the Additional Commissioners or the Commissioners for General Purposes acting as Additional Commissioners in their respective Districts, who shall appoint Meetings for taking all Statements then and from Time to Time to be delivered to them into consideration, within a reasonable Time after the Inspector or Surveyor shall have had the Examination of such Statements ; and in case the said Additional Commissioners respectively shall be satisfied that any such Statements have been bond fide made according to the Provisions of this Act, and so as to enable the Commissioners to charge the respective Persons returning the same with the full Duties with which they ought respectively to be charged on account thereof, and in case no Information shall be given to the said Commissioners of the Insufiiciency thereof, or no Objection shall be made thereto by the Inspector or Surveyor, which he is hereby empowered to make for sufiicient Cause, the said Commissioners shall direct an Assessment to be made of the Duties chargeable on such Statement by virtue of this Act.

CXII. Provided always, and be it enacted. That where the Surveyor or Inspector shall apprehend the Determination made by the said Commissioners to be contrary to the true Intent and Meaning of this Act, and shall then declare himself dissatisfied with such Determination, it shall be lawful for him to Foster Income Tax. - 65.

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require the said Commissioners to state specially and sign the Case upon which the Question arose, together with their Determination thereupon; which Case the said Commissioners are hereby required to state and sign accordingly, and to deliver to the said Inspector or Surveyor, to be by him transmitted to the Commissioners for General Purposes for the same District, who shall with all convenient Speed return an Answer to the Case so transmitted, with their Opinion thereon subscribed; and according to such Opinion the Assessment which shall have been the Cause of such Appeal shall be altered or confirmed.

CXIII. And be it enacted, That in every Instance in which any Person shall have made default in the Delivery of any Statement, such Person not having been otherwise charged to the said last-mentioned Duties, or if the said Additional Commissioners shall not be satisfied with the Statement delivered by any Person, or any Objection shall be made thereto by the Inspector or Surveyor, (which he is hereby authorized and required to make in Writing, setting forth the Cause thereof, whenever he shall see sufficient Cause,) or the said Commissioners shall have received any Information of the Insufficiency of any Statement, the said Commissioners shall make an Assessment on such Person in such Sum as, according to the best of their Judgment, ought to be charged on him by virtue of this Act; which Assessment shall be subject to an Appeal, according to the Directions herein-after contained.

CXIV. And be it enacted, That whenever the Additional Commissioners shall think it proper to refer any Statement to the Commissioners for General Purposes without making any Assessment thereon, it shall be lawful for them so to do on delivering to the last-mentioned Commissioners the Case in Writing relative to such Statement, as the same shall appear to the said Additional Commissioners, with any Matter in question between them, either as to Law or Fact ; and the said Commissioners for General Purposes shall proceed to inquire into the Merits of such Statement, in like Manner as they would have been hereby authorized to do in case the said Additional Commissioners had made an Assessment on such Statement, and

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the Party charged had appealed against the same, and thereupon an Assessment shall be made according to the Determination of the said Commissioners for General Purposes.

CXV. And he it enacted, That the Inspector or Surveyor, being sworn as aforesaid, shall and may at all seasonable Times, inspect and examine any Assessment -which shall be made by the Additional Commissioners, before the Delivery thereof to the Commissioners for General Purposes, and in case he shall discover any Error in the same which in his Judgment shall require Amendment, he shall certify the same to the said Ad-

ditional Commissioners by whom the Assessment shall have been made, and the said Additional Commissioners, upon sufficient Cause being shown to them, shall amend the same as in their Judgment the Case shall require.

CXVI. And be it enacted, That in every Case where the Inspector or Surveyor shall object to the Amount of the Duty charged by any Assessment made by the Additional Commissioners, which he is hereby empowered to do in any Case upon sufficient Cause, he shall state such Objection in Writing to the said Additional Commissioners, who shall thereupon certify the same, together with the Reasons for making such Assessment, and any Information they shall have obtained respecting the same, to the Commissioners for General Purposes ; and the said Inspector or Surveyor shall also give such Notice thereof to the Party assessed as he is required to do by the said several Acts relating to the Duties of Assessed Taxes in Cases of Surcharge, in order that the Party so charged may be at liberty to appear before the said Commissioners for General Purposes in support of such Assessment.

CXVII. And be it enacted. That the said Additional Commissioners shall cause Certificates of Assessments to be duly made out, from Time to Time as the same shall be completed^ distinguishing the Ward, Parish, or Place within their respective Districts for which each such Assessment shall be made, which shall contain the Names and Surnames of the Parties charged, and the Sums which they respectively ought to pay by virtue of this Act, and shall cause such Certificates to be entered in Books provided for that Purpose according to such

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Forms as shall be transmitted to them by the Commissioners of Stamps and Taxes; and the said Additional Commissioners shall sign such Assessments, and from Time to Time deliver the same, so entered and signed, to the Commissioners for General Purposes, under Cover sealed up, and shall also cause the Statements returned to them by the Parties so assessed, or by the Assessors relating to such Assessments, to be delivered at the same Time, sealed up in the like Manner, to the said Commissioners for General Purposes ; provided that no Assessment made by Additional Commissioners, or Persons acting as such, shall be delivered to the respective Parties until the Expiration of Fourteen Days after the Assessment, so signed as aforesaid, shall have been delivered to the Commissioners for General Purposes, or the Persons acting as such, and the Inspector or Surveyor shall have had Notice thereof.

CXVIII. And be it enacted. That if any Person shall think himself aggrieved by an Assessment made by the said Additional Commissioners, or by any Objection to such Assessment made by any Surveyor or Inspector as aforesaid, it shall be lawful for him, on giving Ten Days IvTotice thereof in Writing to the Inspector or Surveyor, to appeal to the Commissioners for Gen-

eral Purposes in the same District where such Assessment was made, who shall hear and determine such Appeal; and the Commissioners for General Purposes shall from Time to Time appoint Days for hearing Appeals as soon after any Assessments shall be returned to them by the Additional Commissioners as conveniently can be done, and the Assessors shall cause Notice of the Days so appointed to be given to the respective Appellants, and the Meetings of the Commissioners for the Purpose of hearing Appeals shall be held from Time to Time, within the Time limited by the said Commissioners, with or without Adjournment; and no Appeal shall be received after the Time so limited, except on the Ground of Diminution of Income, as herein mentioned: Provided always, that if any Person shall be prevented, by Absence, Sickness, or other reasonable Cause, to be allowed by the said Commissioners, from making or proceeding upon his Appeal within the Time so limited, it shall be lawful for the said Commissioners to give

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further Time for that Purpose, or to admit the same to be made by any Agent, Clerk, or Servant on the Behalf of such Appellant.

CXIX. And be it enacted. That in order that all Appeals upon such Assessments may be determined in due Time, the Commissioners for General Purposes shall cause a general Notice to be fixed up in their Office, or left with their Clerk, and also to be affixed on or near to the Door of the Church or Chapel of such Parish or Place, or of some adjoining Parish or Place, in Cases requiring the same by reason of any such Place having no Church or Chapel, limiting the Time for hearing all Appeals, and which Appeals shall be limited to be heard within a reasonable Time after the Cause thereof shall have arisen ; and no Appeal shall be heard after the Time limited in such Notice, unless the Appeal shall be made on behalf of any Person who shall be absent out of the Realm, or prevented by Sickness from attending in Person within the Time so limited, in which Cases it shall be lawful for the said Commissioners to postpone any such Appeal from Time to Time, or to admit other Proof than the Oath of the Party of the Truth of the several Matters required by this Act to be proved by his Oath.

CXX. And be it enacted. That upon receiving Notice of Appeal against any Assessment made as last aforesaid, and also in every Case where the Commissioners for General Purposes shall see Cause to allow the Objection of such Inspector or Surveyor to such Assessment, the said Commissioners shall direct their Precept to the Person appealing, to return to them, within the Time limited therein, a Schedule containing such Particulars as the said Commissioners shall demand, under the Authority of this Act, for their Information, respecting the Property of such Person, or the Trade, Manufacture, Adventure, or Concern in the Nature of Trade, or the Profession, Employment, or Vocation respectively carried on or exercised by

such Person, and the Amount of the Balance of his Profits and Gains, distinguishing the particular Amounts derived from each separate Source before mentioned, or respecting the Particulars of the Deductions from any of such Profits or Gains made in such Statements or Schedules, and which the said Commis-

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sioners are hereby empowered and required to demand, at their Discretion, whenever the same shall appear to them necessary for the Purposes mentioned in this Act, and so from Time to Time until a complete Schedule, to the Satisfaction of the said Commissioners, of all the Particulars required by them, shall be delivered; and every such Precept, being delivered to or left at the last or usual Place of Abode of the Person to whom the same shall be directed, shall be binding upon him according to the Exigency thereof ; or in case such Person shall have removed from the Jurisdiction of the said Commissioners, or cannot be found, or his Place of Abode shall not be known, then, upon fixing such Precept on or near to the Door of the Church or Chapel of the Place where the Commissioners shall meet in the Execution of this Act, such Precept shall also be binding upon such Person according to the Exigency thereof, and such Person shall make the Return required by the said Commissioners within the Time limited in such Precept, under the Penalty in this Act contained, and subject to such Charge as the said Commissioners are hereby authorized to make in such Case; to which Schedule any Inspector or Surveyor sworn as aforesaid shall have free Access at all reasonable Times, and shall take such Copies thereof, or of any Parts thereof, or Extracts from the same, as he shall think necessary for the due Execution of this Act.

CXXI. And be it enacted. That it shall be lawful for the Inspector or Surveyor sworn as aforesaid, within a reasonable Time, to be allowed by the said Commissioners for General Purposes, after he shall have had the Examination of such Schedules, to object to the same or any Part thereof, and to state such Objections in Writing, and the Cause thereof, to the best of his Knowledge or Information; and the said Inspector or Surveyor shall, in every Case of objecting to any such Schedule, deliver a Notice in Writing of such Objection to the Party to be charged, or leave the same at his last or usual Place of Abode, under Cover sealed up and directed to such Party, in order that he may, if he shall think fit, appeal from the same to the said Commissioners: Provided always, that no Assessment shall be confirmed, nor any Alteration therein be made,

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until the Appeal upon such Objection or Assessment shall be heard and determined.

CXXII. And be it enacted, That if, upon receiving the Objection of such Inspector or Surveyor to any Schedule, the said Commissioners for General Purposes shall see Cause to disallow such Objection, or if, upon the hearing of any such Appeal as aforesaid, the said Commissioners shall be satisfied with the Assessment made by the Additional Commissioners, or after Delivery of a Schedule they shall be satisfied therewith, and shall have received no Information of the Insufficiency thereof, the said Commissioners for General Purposes shall direct such Assessment to be confirmed or altered according to such Schedule, as the Case may require ; provided that in every Case where they shall think pi'oper that the said Statement on which the Additional Commissioners made their Assessment, or the Schedule delivered to the Commissioners for General Purposes, should be verified, they shall direct the Assessor to give Notice to the Person to be charged with the said Duties to appear before them to verify the said Statement or Schedule in the Manner herein-after mentioned; and every such Person is hereby required to appear accordingly before the said Commissioners, and, on Oath as aforesaid, to verify the Contents of his Statement or Schedule, and to sign and subscribe the same with his proper Name ; and such Oath shall be, that the Contents of such Statement or Schedule are true to the best of his Judgment or Belief, and that the same contains the just Balance of the Profits and Gains arising from the Source or Sources therein contained, after making such Reductions as are therein stated, and that no Deduction whatever than such as is therein stated, and to such Amount only as is herein stated, hath been made from the Profits or Gains accounted for; provided always, that such Person shall be at liberty to amend his said Statement or Schedule before he shall be required to take such Oath; and after such Oath, and in every Case where such Statement or Schedule shall not have been objected to as aforesaid, and the said Commissioners shall be satisfied therewith, they shall make an Assessment according thereto, on the Amount therein stated, at which the Duty shall have been com-

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puted; and every such Assessment, made after Verification of such Statement or Schedule, shall be final and conclnsive as to the Matters contained in such Statement or Schedule.

CXXIII. And be it enacted, That whenever the Commissioners for General Purposes shall be dissatisfied vsfith any Assessment returned by the Additional Commissioners to them, or with any Schedule delivered to them, or shall require further Information respecting the same, it shall be lawful for the said Commissioners for General Purposes to put any Question in Writing touching such Assessment, or the Contents of such Schedule, or touching any of the Matters which ought to be contained therein, or any Sums which shall have been set against or deducted from the Profits or Gains to be estimated in such Assessment or Schedule, and the Particulars thereof, and to demand an Answer in Writing accordingly from and signed

by the Person to be charged, and so from Time to Time whenever the said Commissioners shall think the same necessary, and the said Commissioners for General Purposes shall from Time to Time issue their Precept, requiring true and particular Answers to be given to such Questions within Seven Days after the Service of such Precept; and every such Person shall make true and particular Answers, in Writing, signed by him, to such Questions, within the Time limited by such Precept, or shall within the like Period tender himself before the said Commissioners for General Purposes to be examined by them viva voce to such Matters; and every Person required to make such Answers, or appearing before the said Commissioners to be examined as a Party, or as the Clerk, Agent, or Servant of such Party, as herein is mentioned, shall be permitted to give his Answers, either in Writing as aforesaid or viva voce, without having taken any Oath, and shall be at liberty to object to any Question, and Peremptorily to refuse answering the same ; and the Substance of such Answers as he shall give viva voce shall, in his Presence, be reduced into Writing, and read to him, and he shall be at liberty to alter any Part thereof, and also to alter or amend any Particular contained in his Answers in Writing, or in any Schedule or Declaration, before he shall be called upon to verify the same in the Manner herein directed ; and every

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Bucli Schedule shall be altered or amended as shall seem requisite, after such Inquiry or Examination.^^

CXXIV. And be it enacted, That it shall be lawful for the Commissioners for General Purposes, in every such Case as aforesaid, whenever they shall think the same necessary, to require the Person upon whom any Assessment hath been made by the Additional Commissioners, with which the said Commissioners for General Purposes are dissatisfied, or from whom such Schedule or Answers in Writing as aforesaid have been received, with which the said Commissioners are dissatisfied, to appear and verify the same, and, upon the Appearance of such Person, to permit him to alter or amend such Schedule or Answers, and thereupon to administer to such Person the Oath herein-after mentioned, and also to require any Person who shall have been examined viva voce before them to verify his Examination on Oath, which any One of the said Commissioners is hereby empowered to administer, and such Oath shall be, that the Contents of the said Statements or Schedules are true to the best of his Knowledge and Belief, and contain a full and true Account of the Balance of all the Profits and Gains of the Deponent chargeable by this Act, to the best of his Knowledge and Belief, and a full and true Account of every Deduction made from his Profits or Gains in adjusting such Balance, or that the Contents of all such Answers in Writing as shall have been returned to the said Commissioners by him as the same are then stated, or that the Contents of his Examination, as the same have been reduced into Writing, are true ; and every such Oath shall be subscribed by the Party taking the same.

CXXV. And be it enacted, That it shall be lawful for the Commissioners for General Purposes to summon in like Manner any Person, whom they shall think able to give Evidence or Testimony respecting the Assessment made or to be made on any other Person, to appear before them to be examined, and to examine every such Person who shall so appear before them on Oath (except the Clerk, Agent, or Servant of the Person to be

28 This section has been repealed, See the Finance Act of 1907, 7 Edw. except so far as thus referred to or VII, c. 13, §§ 24 (1), 30 (1), and incorporated in any other enactment, third schedule thereto.

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charged, or other Person confidentially intrusted or employed in the Affairs of such Party to be charged, and who shall respectively be examined in the same Manner and subject to the same Restrictions as are herein-before provided for the viva voce Examination of any Party touching the Assessments to be charged on him), which Oath any One of the said Commissioners is hereby empowered to administer; and such Oath shall be, that- the Testimony or Evidence to be given by such Person shall contain the whole Truth, and nothing but the Truth, in respect of the Matter in question concerning which such Evidence or Testimony is to be given, and every such Oath shall be subscribed by the Person taking the same; and if any Person, being duly summoned as aforesaid, shall refuse or neglect to appear before the said Commissioners at the Time and Place to be appointed for that Purpose, or if any Person, other than such Clerk, Agent, Ser\ 'ant, or Person confidentially intrusted or employed as aforesaid, being summoned, shall appear before the said Commissioners, but shall refuse to be sworn, or to subscribe such Oath as aforesaid, or, having taken and subscribed such Oath, shall refuse to answer any lawful Question touching the Matter depending before the said Commissioners, every Person so offending shall forfeit any Sum not exceeding Twenty Pounds.

CXXVI. And be it enacted, That if the Commissioners for Oeneral Purposes, or the major Part of them present, after hearing all such Appeals as shall be depending before them, or upon any Objection made by the Inspector or Surveyor to any such Assessment or Schedule, whether such Inquiry or Examination as aforesaid shall have taken place or not, shall agree to make an Assessment according to the Statement contained in the said Schedule, as the same shall have been returned, or altered or amended upon Appeal as aforesaid, they shall direct an Assessment to be made of the Duties chargeable on the Statement contained in the said Schedule at the Rate contained in this Act ; and if the said Commissioners shall think proper to require a Verification of the said Schedule, they shall give Notice in manner aforesaid to the Party to appear before them to verify the same, and such Verification shall be made

by the Party in such Manner, and such Assessment thereupon shall be made, as herein-before directed, which Assessment shall be final and conclusive; but nevertheless, in every Instance where any Person shall have neglected or refused to return such •Schedule according to the Exigency of the Precept of the said 'Commissioners, or if any Clerk, Agent, or Servant of such Party as aforesaid, being summoned, shall have neglected or refused to appear before the Commissioners to be examined, or if such Party, or his Clerk, Agent, or Servant as aforesaid, shall have declined to answer any Question put to him by the said Commissioners in Writing or viva voce, or where the Schedule delivered shall have been objected to as aforesaid, and such Objection shall not have been appealed against within such reasonable Time as is directed by this Act, or where any Person, being required so to do, shall have neglected or refused to verify his Statement or Schedule, or his Answers or Examination in Writing, or where the Commissioners shall agree as aforesaid to allow the Objections, or any of them, made by such Inspector or Surveyor, it shall be lawful for the said Commissioners, and they are hereby required, in every such Case, according to the best of their Judgment, to settle and ascertain in what Sums such Person ought to be charged, and to make an Assessment accordingly, which Assessment shall be final and conclusive.

CXXVII. And be it enacted. That in every Case where the Commissioners for General Purposes shall have made any increased Assessment upon the Amount contained in the Statement or Schedule of the Party to be charged, or shall at any Time during the Continuance of this Act discover that any Increase ought to be made, whether upon the Surcharge of the Inspector or Surveyor, or from his Information, or otherwise, it shall be lawful for them to charge such Person in a Sum not exceeding Treble the Amount by which the Duties shall have been increased; (that is to say,) where the Party shall have refused or neglected to deliver any Statement or Schedule, then in a Sum not exceeding Treble the Amount of the Sum which, according to the Rate prescribed in Schedule (D.), such Person, in the Judgment of the said Commissioners, ought to be charged

at, to be added to the Assessment, and applied as directed by this Act in other Cases of increased Assessments, and in case a Statement or Schedule shall have been so delivered, then in a Sum not exceeding Treble the Amount beyond the Amount contained in such Statement or Schedule, unless such Person shall in every such Case make it appear to the Satisfaction of the said Commissioners that the Omission complained of did not proceed from any Fraud, Covin, Art, or Contrivance, or any gross-er vyilful Neglect.

CXXVIII. And be it enacted. That if any Person required by the Commissioners for General Purposes to make out and deliver any Schedule to the Person to whom the same ought to be delivered in pursuance of this Act shall refuse or neglect so to do, or shall refuse or neglect to appear before the said Commissioners, or to verify upon Oath before them any Statement or Schedule by him delivered, -within the Time limited by such Commissioners in pursuance of this Act, every such Person so offending shall forfeit any Sum not exceeding Twenty Pounds, and Treble the Duty at which he ought to be assessed.

CXXIX. Provided always, and be it enacted. That if any Person who shall have delivered a Statement or Schedule shall discover any Omission or wrong Statement therein, it shall be lawful for him to deliver an additional Statement or Schedule rectifying such Omission or wrong Statement, and such Person shall not afterwards be subject to any Proceeding by reason of such Omission or wrong Statement ; and if any Person shall not have delivered a Statement or Schedule, within the Time limited by the Commissioners for that Purpose, it shall be lawful for him to deliver a Statement or Schedule, in manner herein directed, at any Time before a Proceeding shall be had to recover the Penalty herein mentioned, and no Proceeding shall be afterwards had for recovering such Penalty; and if any Proceeding shall have been actually had before the Commissioners - for recovering such Penalty, it shall be lawful for the same Commissioners, on due Proof to their Satisfaction that no Fraud or Evasion whatever was intended, to stay such Proceedings, either on the Terms of paying or without paying the Costs then incurred, as the Commissioners shall think fit; and if any

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Proceeding shall have been commenced in any Court, it shall be lawful for the Commissioners to certify, that in their Judgment no Fraud or Evasion was intended by the Party making such Omission, and it shall be lawful for any Judge of such Court, on a summary Application, to stay such Proceedings on such Terms as he shall think fit; or if such Person shall have delivered an imperfect Statement or Schedule, and shall give to the Commissioners a sufficient Reason why a perfect Statement or Schedule cannot be delivered, the said Commissioners, being satisfied therewith, shall give further Time, and so from Time to Time, for the Delivery of such Statement or Schedule ; and such Person shall not be liable to any Penalty for not having delivered such Statement or Schedule within the Time before limited, in case such Person shall have delivered as perfect a Statement or Schedule as from the Nature of the Case he was enabled to give, and so from Time to Time as long as the Commissioners shall grant further Time as aforesaid.

CXXX. Provided always, and be it enacted. That in any Case in which an Appeal is allowed to be made to the Commissioners for General Purposes against any Assessment of the

Duties contained in Schedule (D.) of this Act, or against any
■Objection of the Inspector or Surveyor to such Assessment, or
against any Surcharge of the said Duties, it shall be lawful for
the Person assessed or charged, if he shall think fit, instead of
appealing to the said Commissioners for General Purposes, to
appeal to the Commissioners for Special Purposes, upon giving
JStotice thereof in Writing to the Inspector or Surveyor within
the Time limited for Notices of Appeal to the Commissioners
for General Purposes in similar Cases, and thereupon every
such Appeal shall be heard and determined by Two or more of
the Commissioners for Special Purposes who shall be directed
by the Commissioners of Stamps and Taxes to hear Appeals in
the District in which such Appellant shall be chargeable, and
the Determination of the said Commissioners for Special Pur-
poses shall be final and conclusive in the Matter : Provided al-
ways, that no Person who shall claim the Exemption herein-
after granted to Persons whose annual Income is less than One
iundred and fifty Pounds shall be allowed to appeal to the said

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Commissioners for Special Purposes, but that every such Claimi
shall be determined by the Commissioners for General Pur-
poses as herein-after directed.

CXXXI. Provided also, and be it enacted, That it shall be-
lawful for any Person chargeable to the Duties contained in the
said Schedule (D.)j and who shall not claim the said Exemption
herein-after granted, to require, if he shall think fit, that all
Proceedings in order to an Assessment upon him, in respect of
Profits and Gains chargeable under the said Schedule, shall be
had and taken before the Commissioners for Special Purposes
in the Manner herein-after directed, instead of the Additional
Commissioners or the Commissioners for General Purposes,
provided he shall deliver a Notice of such Eequest, together
with the List, Declaration, and Statement of such Profits and
Gains, to the Assessor of the Parish or Place, to be by him
transmitted to the Inspector or Surveyor of the District in which
the same shall be chargeable, within the Time to be limited by
the general Notice herein-before directed to be given for De-
livery of all such Lists and Statements as aforesaid ; and there-
upon the said Inspector or Surveyor shall examine the said List
and Statement, and shall compute and assess the Duties which,
according to his Judgment, shall be chargeable upon the Party
under the said Schedule (D.), and shall make a Certificate of
such Assessment, and deliver the same, together with the said
List, Declaration, and Statement, to the Commissioners for
Special Purposes, who shall examino the same, and make or
sign and allow such an Assessment of the said Duties as shall
appear to them to be just and proper, subject to an Appeal by
the Party to be charged, or by the Inspector or Surveyor ob-
jecting to such Assessment, in like Manner and under the like
Rules and Eegulations as in Cases of Appeal against Assess-
ments made by the said Additional Commissioners ; and every
such Appeal shall be heard and determined by the Commission-

ers for Special Purposes directed by the Commissioners of Stamps and Taxes to hear Appeals in such District; provided that if either the Party to be charged, or the Inspector or Surveyor, shall apprehend the Determination of the said Commissioners for Special Purposes on such Appeal to be erroneous

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in any Particular, and shall then express himself dissatisfied therewith, the said Commissioners, if required by him, shall state specially and sign, the Case on which the Question arose, together with their Determination thereon, and transmit the same to the Commissioners of Stamps and Taxes for their Opinion ; and the said last-mentioned Commissioners shall, with all convenient Speed, state and subscribe their Opinion on the Case so transmitted, and according to such Opinion the Assessment which shall have been the Subject of Appeal shall be altered or confirmed, and the Decision of the Commissioners of Stamps and Taxes shall be final and conclusive in the Matter; and in every Case in which an Assessment shall be made by the said Commissioners for Special Purposes, they shall notify the Amount thereof to the Party assessed, who shall cause the same to be paid to the Receiver General of Stamps and Taxes, or the proper Officer for Receipt in England or Scotland, at such Time or Times and in such Manner as the said Commissioners shall direct; and in default of such Payment the said Commissioners shall make a Duplicate of such Assessment, and deliver the same, together with their Warrant for levying the Amount thereof, to the Collector of the Duties appointed by the Commissioners for General Purposes for the Parish or Place in which the Party assessed shall reside, and such Collector is hereby authorized and required to levy and raise the Duties so assessed according to the Exigency of such Warrant. CXXXII. And be it enacted. That wherever by this Act Authority is given to the Commissioners for Special Purposes to make, sign, or allow any Assessment, or to hear any Appeal, then and in every such Case all the Powers and Authorities, Rules and Regulations, which under or by virtue of this or any other Act may be exercised or put in force by the said Additional Commissioners or the said Commissioners for General Purposes, or by or under their Warrant, Order, or Direction respectively, with relation to the making, signing, or allowing of any Assessment, or to the Proceedings on any Appeal before them, or to the collecting, levying, and receiving of any of the Duties hereby granted, shall and may lawfully be exercised and put in force by the said Commissioners for Special Pur-

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poses, or by or under their Warrant, Order, or Direction, with reference to any Assessment to be made, signed, or allowed by such last-mentioned Commissioners, or any Appeal to be heard or determined by them.

CXXXIII. And be it enacted, That if within or at the End of the Year current at the Time of making any Assessment under this Act, or at the End of any Year when such Assessment ought to have been made, any Person charged to the Duties contained in Schedule (D.), whether he shall have computed his Profits or Gains arising as last aforesaid on the Amount thereof in the preceding or current Year, or on an Average of Years, shall find, and shall prove to the Satisfaction of the Commissioners by whom the Assessment was made, that his Profits and Gains during such Year for which the Computation was made fell short of the Sum so computed in respect of the same Source of Profit on which the Computation was made, it shall be lawful for the said Commissioners to cause the Assessment made for such current Year to be amended in respect of such Source of Profit, as the Case shall require, and in case the Sum assessed shall have been paid, to certify under their Hands to the Commissioners for Special Purposes at the Head Office for Stamps and Taxes in England the Amount of the Sum overpaid upon such First Assessment, and thereupon the said last-mentioned Commissioners shall issue an Order for the Repayment of such Sum as shall have been so overpaid, and such Order shall be directed to the Receiver General of Stamps and Taxes, or to an Officer for Receipt or Collector of the Duties granted by this Act, or to a Distributor or Sub-Distributor of Stamps, and shall authorize and require the Repayment of the said Sum so overpaid as aforesaid, in like Manner as is herein-before provided with respect to the Allowances to be granted under No. V. of Schedule (A.) of this Act.

CXXXIV. And be it enacted. That in case any Person charged to the said Duties under Schedule (D.), whether the Computation thereon shall have been made on the Profits of One Year or on an Average, as herein allowed, shall cease to exercise the Profession, or to carry on the Trade, Employment, or Vocation, in respect whereof such Assessment was made, or

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shall die, or become bankrupt or insolvent, before the End of the Year for making such Assessment, or shall from any other specific Cause be deprived of or lose the Profits or Gains on which the Computation of Duty charged in such Assessment was made, it shall be lawful for such Person, or his Executors or Administrators, to make Application to the Commissioners for General Purposes of the District, within Three Calendar Months after the End of such Year, and on due Proof thereof to their Satisfaction the said Commissioners shall cause the Assessment to be amended, as the Case may require, and give

such Relief to the Party charged, or his Executors or Administrators, as shall be just, and in Cases requiring the same the said Commissioners shall direct, in manner before mentioned. Repayment to be made of such Sum as shall have been overpaid on the Assessment amended or vacated: Provided always, that where any Person shall have succeeded to the Trade or Business of the Party charged, no such Abatement shall be made, unless it shall be proved to the Satisfaction of the said Commissioners that the Profits and Gains of such Trade or Business have fallen short from some specific Cause, to be alleged to them and proved, since such Change or Succession took place, or by reason thereof, but such Person so succeeding to the same shall be liable to the Payment of the full Duties thereon without any new Assessment.

CXXXV. And be it enacted, That the Persons acting as Commissioners in the Execution of this Act shall be charged and assessed to the Duties contained in Schedule (D.), if liable thereto, in like Manner as any other Persons may be charged and assessed to the said Duties : Provided always, that any Commissioner whose Statement or Schedule shall be under Consideration, or shall be concerned or interested therein, either for himself or for any other Person, in any Character before described, shall have no Voice, and shall not be present, except upon an Appeal, for the Purpose of being examined viva voce by the Commissioners then having his Assessment or Schedule under Consideration, but shall withdraw during the Consideration and Determination thereof.
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CXXXVI. And be it enacted, That the Commissioners for General Purposes acting in relation to the Duties contained in Schedule (D.) shall, in their respective Books of Assessment, enter and cause to be entered the several Amounts of the Sums assessed by them ; and they shall from Time to Time make out, and transmit to the Commissioners of Stamps and Taxes, Accounts of the Amount of Duty assessed by them, distinguishing the Amount charged on each Person, which Accounts shall severally be made out, with the Particulars required by this Act; and they shall also from Time to Time make out, and transmit to the said Commissioners of Stamps and Taxes, Lists containing the Name, Description, and Place of Residence of every Person assessed by them respectively, as soon as the same conveniently can be done, which Lists shall be made out according to an alphabetical Arrangement of the respective Parishes or Places of Residence in their respective Districts.

CXXXVII. And be it enacted. That all Assessments upon Profits or Gains under Schedule (D.) made by the Commissioners for General Purposes shall be entered in Books, with the Names and Descriptions of the Persons, Corporations, Companies, or Societies to be charged therewith, and their respective Places of Abode set opposite thereto, and which Entries

shall respectively be numbered progressively, or lettered, or distinguished by Numbers or Letters, as the said Commissioners shall think proper; and that when and as soon as the said Commissioners shall have caused to be made any such Entry in such Book, in case the Person charged by such Assessment shall have declared his Intention to pay the Duty to the proper Officer for Receipt within the Time limited by this Act for Payment thereof, and in case the said Commissioners shall be satisfied with such Declaration, they shall deliver to such Person, or to such other Person as shall be there attending on his Behalf, a Certificate under the Hands of Two or more of such Commissioners, specifying the Amount of the Sums to be paid within One Year upon such Assessment; and every such Certificate shall be numbered or lettered with the same Number or Letter as the Entry in the Book of the said Commissioners to which such Certificate shall relate shall be marked and num-

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bered or lettered, without naming or otherwise describing the Person charged thereby ; which Certificate shall, on Production thereof, be a sufficient Authority to the said Officer for Receipt from Time to Time to receive from any Person bearing and producing such Certificate the Amount of the Sums therein contained, in such Proportions thereof as by this Act are made payable by Instalments, and at the Times by this Act appointed for Payment thereof, or in advance; and on the Payment of the Sums contained in any such Certificate, or any Proportion thereof, the said Officer for Receipt shall give Certificates for the same, acknowledging the Receipt of the Sum paid on account of the Certificate of the said respective Commissioners by the Number or Letter marked thereon as before directed.

CXXXVIII. And be it enacted, That in all Cases where the Commissioners shall not have received a Declaration of the intended Payment to the Officer for Receipt as aforesaid of the Duty to be charged under Schedule (D.), or shall not be satisfied with such Declaration, they shall deliver a Duplicate of the Assessments to the Collector, with the Names and Descriptions of the Parties charged therewith, together with their Warrants for collecting the same, in such Form and under the like Powers as they are authorized to collect the Duty under any of the other Schedules contained in this Act; and if after the Receipt of any such Declaration the Duties shall not be duly satisfied and paid accordingly, the said Commissioners shall cause the Names of the Defaulters, and the Amount of Duty assessed on each, to be inserted from Time to Time in the Duplicate of such Collector ; and the Warrant for collecting the same shall be of the like Force and Effect as if such Names and Sums had been inserted therein at the Time of issuing such Warrant.

CXXXIX. And be it enacted, That it shall be lawful for the respective Commissioners for General Purposes to issue

out and deliver to the respective Officers for Receipt Duplicates of the Assessments made by them, containing the Sums assessed on every Person to whom a Certificate hath been delivered by Letter or Number, together with the Number or Letter set

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opposite thereto in their respective Books before mentioned, without naming such Persons, with their Warrants for receiving the Duties charged by such Commissioners respectively when the same shall become payable as aforesaid; and all such Sums shall be paid to the respective Officers for Receipt, and such Part thereof as shall not be so paid to them may be levied and collected as herein is mentioned ; and if not so paid, levied, or collected, the same shall be recoverable as a Debt to the Queen's Majesty, with full Costs of Suit, and all Charges and Expences attending the same.

CXL. And be it enacted. That the Duties payable on such last-mentioned Assessments shall be paid to the proper Officer for Receipt, by such Instalments as by this Act is directed, before the respective Days appointed for such Payments, according to the Regulations of this Act, or by Three or Two Instalments, or in One Sum in full, as the Parties shall choose; and the Certificates hereby required to be given on such Payments shall be delivered to the respective Commissioners, or to One or more of them, or to their Clerk, at their Office, before the Times when the same are hereby made payable, taking his or their Receipt for the same, which Receipt shall be a sufficient Discharge for the Money so paid in satisfaction of so much of the Assessment as shall be mentioned in such Certificate to be so paid; and if any Person shall neglect to pay such Duties at the Time and in the Manner hereby directed for Payment thereof, or, having paid the same, shall neglect to deliver the Certificate required to be given on such Payment as hereinbefore directed, it shall be lawful for the Commissioners for General Purposes, and they are hereby required, to deliver a Duplicate of all Sums assessed on any Person who shall have made default in paying or accounting for the Payment of the same, together with their Warrant, to such Collector as they shall appoint to levy the Sum in arrear and unpaid, and such Duplicate shall be made out, and such Sums shall be levied, according to the Regulations of the said Acts relating to the Duties of Assessed Taxes.

CXLI. And be it enacted, That it shall be lawful for any Person to pay in advance to the Receiver General of Stamps

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and Taxes, or to the proper Officer for Receipt, any Sum of Money charged as aforesaid, and to require a Certificate acknowledging such Payment; and it shall be lawful for the said

Receiver General or Officer for Receipt, on Production of the Notice or Certificate of such Assessment at the Time of Payment of the said Duty in advance (the Sum so paid not in any Case to be less than the Sum which appears by such Certificate to be payable by Two Instalments), to make an Allowance, at the Rate of Four Pounds per Centum per Annum, out of the Sum so paid in advance, calculated upon such Sum for the Period by which the same shall be paid sooner than the Period prescribed by this Act for the Payment thereof; and in every such Case the said Receiver General or Officer for Receipt shall give the Person paying the same a Certificate of such Payment, specifying therein the Number of Instalments thereby discharged, and the Amount of the Allowance for such prompt Payment, and referring thereby to the Notice or Certificate of Assessment then produced, and the Name, Number, or Letter therein mentioned; and all such Allowances shall be made at the Time of paying the said Duties; and such Certificates as aforesaid, being delivered at the respective Offices of the Commissioners for executing this Act, shall be received by them as Cash in discharge of the Assessments, and shall be allowed to them in their Accounts.

CXLII. And be it enacted. That upon the Payment of any such Sum of Money as aforesaid the said Receiver General or Officer for Receipt shall give such Certificate as aforesaid for the Whole of the Sums so paid, or separate Certificates in like Form for such Portions thereof as shall be required, which Certificates shall severally be cut off indentwise from the Counter-cheques thereof, which Counter-cheques are to remain with the said Receiver General or Officer for Receipt; and every such Certificate shall be denominated in the Body thereof to be on account of Payments made in discharge of the Duties assessed by virtue of this Act; and upon the Delivery of any such Certificate as last aforesaid to the said Commissioners for General Purposes, or at their Office, in discharge of the Whole or any Part of the said Duties assessed or charged upon the,

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Person delivering such Certificate, the said Commissioners or their Clerk shall, if required, indorse in Writing on the Back of the Certificate to be given by them or him in such Case the Amount of the Number of Instalments of the said Duties to be discharged by such Payments, which Receipts of the said Commissioners or their Clerks as aforesaid shall be received, without further Proof, as Evidence of such Payments, in all Courts and Places and before all Persons whatever.

CXLIII. And whereas it is expedient to relieve Persons who may be willing to compound on the Terms herein-after mentioned for the Duties on the Profits and Gains described in the said Schedule (D.) from making any further Return of such Profits and Gains chargeable in the Second and Third Years of the Term limited for the Continuance of this Act ; be it enacted. That every Person desirous of compounding for

the said Duties shall deliver the List and Statement of his Profits and Gains chargeable under the said Schedule (D.) in the First Year of this Act to the Assessor of the Parish or Place in which such Profits are chargeable, in order to an Assessment of the Duties thereon being made by the said Commissioners for Special Purposes, and such Person shall at the same Time also deliver to the said Assessor a Notice signed by such Person of his Desire to Compound for the Duties thereon in the Manner allowed by this Act; and when such Assessment shall have been made by the said Commissioners (any Appeal allowed by this Act and made against the same having been first determined) it shall be lawful for the said Commissioners for Special Purposes to contract and agree with such Person for a Composition for the said Duties, on the Terms hereinafter mentioned, for the Period of Three Years, limited for the Continuance of this Act, provided such Person shall enter into and sign a Contract of Composition within the Space of One Calendar Month next after the making of such Assessment shall have been notified to him, and his Appeal against the same (if any) shall have been determined ; and the Terms of such Composition shall be, the Payment in each and every Year of the said Term of the Amount of the said Assessment so made as aforesaid, together with an Addition thereto at and after the

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Rate of One Shilling for every Twenty Shillings of the Sum assessed as aforesaid, which Addition shall be made by the said Commissioners to the said Assessment so made for the First Year of the said Term, and in each subsequent Year thereof the Assessment of the said Duties under Schedule (D-), upon the Person who shall have entered into such Contract of Composition, shall be made by the Commissioners for Special Purposes in a Sum equal to the aggregate Amount of the said First Year's Assessment, with the said additional Rate thereon; and it shall not be necessary for such Person to deliver any further List, Declaration, or Statement of Profits described in the said Schedule (D.), during the said Term of Composition: Provided always, that if the Person upon whom such Assessment as aforesaid shall have been made shall neglect or refuse to enter into and sign such Contract of Composition within the Time herein limited for that Purpose, the Assessment so made, without the said additional Rate, shall be collected, levied, and recovered in like Manner as any other Assessment made by the Commissioners executing this Act. ^'

CXLIV. And be it enacted, That the Contract of Composition may be made in the following Form ; videlicet,

"WHEREAS an Assessment of the Duties on Profits and Gains chargeable under Schedule (D.) of an Act passed in the Year of Queen Victoria, intituled An Act [set forth the Title of this Act], hath been duly made by Two of the Commissioners for Special Purposes acting in the Execution of the said Act, upon A.B. of, &c., in the Sum of for the Year

ending on the Fifth Day of April One thousand eight hundred and forty-three, and the said A.B. is desirous of compound Lag for the said Duties, as allowed by the said Act, for the Term herein-after mentioned :

We, the undersigned. Two of the Commissioners for Special Purposes acting in the Execution of the said Act, have, by virtue and in pursuance of the Power and Authority thereby given to us in this Behalf, contracted and agreed with the said A.B. for a Composition for the said Duties, chargeable or which

29 Repealed by 37 & 38 Vict., c. 96.

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may become chargeable upon him under the said Schedule (D.), during the Term of Three Years, to be computed from the Fifth Day of April One thousand eight hundred and forty-two, and the following are the Terms of such Composition; (that is to say,)

The said A. B., his Heirs, Executors, or Administrators, shall well and truly pay to for the Use of Her Majesty, in

each and every Year of the said Term, the Sum of (being the Amount of the said Assessment, together with an Addition thereto at and after the Eate of One Shilling for every Twenty Shillings of the Sum assessed as aforesaid) by Four equal quarterly Instalments; {videlicet;}

First Instalment, on or before the Twentieth Day of June;

Second Instalment, on or before the Twentieth Day of September;

Third Instalment, on or before the Twentieth Day of December;

Fourth Instalment, on or before the Twentieth Day of March^ in each and every Year of the Term aforesaid :
Provided always, that the Instalments now due and

payable according to the Tenor of this Contract shall be paid,, together with the Instalment, on or before the

Day of now next ensuing.

Dated this Day of

(Signed) (Commissioners for Special Pur-

poses under the Act Yict. Cap.

Witness to the signing)

hereof by the said A. 5.j

A. B. the Party hereto.

Inspector [or Surveyor] of Taxes."

And every such Contract of Composition shall be made in Two Parts, which shall be severally signed by Two Commissioners for Special Purposes, and by the Person compounding, the signing whereof by such Person shall be witnessed and attested by the Inspector or Surveyor of the District in which such Person shall reside, or be chargeable for the said Duties, and one of such Parts of the said Contract so signed shall be delivered to the Person compounding, and the other Part shall be trans-

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mitted to the Head Office for Stamps and Taxes in England or Scotland, as the Case may be ; and every such Contract shall be an Authority for the Commissioners for Special Purposes to make an Assessment on the Party compounding for each respective Year of the said Term of Composition in the Sum specified in such Contract as the annual Amount to be paid for such Composition, and to cause the same to be collected, levied, and paid over at such Times and in such Manner, and by all or any of such Ways and Means, as are herein respectively appointed,, prescribed, or authorized in relation to any other Assessment made by Commissioners acting in the Execution of this Act^ Provided always, that vvhether any such Assessment as hereinbefore authorized to be made on the Party compounding shall be made or not, the Sum specified in such Contract of Composition as the annual Amount to be paid by the Party compounding, and the several Instalments thereof, when and as they respectively become payable according to the Tenor and Effect of such Contract, shall be a Debt due to the Queen's Majesty from the said Party compounding, his Heirs, Executors, and Administrators, and shall be recoverable by all or any of the Ways or Means by which any such Debt may be recovered, together with full Costs of Suit, and all Charges and Expences attending the same: Provided also, that if any Person who shall have compounded as aforesaid shall die, or become bankrupt or insolvent, before the Expiration of the said Term of Three Years, his Contract of Composition shall cease and determine on the Eifth Day of April next after his Death, Bankruptcy, or Insolvency, save and except as to any Instalment of Duty which before the said Day shall have become payable and shall then remain unpaid.'"^

CXLV. And be it enacted. That if any Person who shall propose to compound for the Duties chargeable under Schedule (D.) of this Act shall wilfully make or deliver any false List, Declaration, or Statement of Profits or Gains described in the said Schedule, or wilfully conceal or omit to state any of such his Profits or Gains, or any Part or Portion thereof, or any

30 Repealed by 37 & 38 Viet., c. 96.

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other Matter or Thing required by this Act to be stated in such List, Declaration, or Statement, or if any Person shall by any fraudulent Means procure an Assessment to be made upon him for a less Amount of the said Duties than he shall be chargeable with, in order to compound thereon, or if any Person shall by any fraudulent Means whatever cause or procure a Contract of Composition to be made or entered into with him for a less Amount of Duty than he ought to be charged with, every Person so offending in any of the Cases aforesaid shall forfeit the Sum of Fifty Pounds, and the Contract of Composition, if any shall have been made with such Person, shall be void and of no effect, and the Party shall be charged and assessed as if no such Contract had been made : Provided nevertheless, that any Sum of Money which may have been paid under or in pursuance of such Contract shall be forfeited to Her Majesty."

CXLVI. And be it enacted. That the Duties hereby granted, contained in the Schedule marked (E.) shall be assessed and charged under the following Rules, which Rules shall be deemed and construed a Part of this Act, and to refer to the said last-mentioned Duties, as if the same had been inserted under a special Enactment.

Schedule (E.)

Rules for charging the said Duties.

First. - The said Duties shall be annually charged on the Persons respectively having, using, or exercising the Offices or Employments of Profit mentioned in the said Schedule (E.), or to whom the Annuities, Pensions, or Stipends mentioned in the same Schedule shall be payable for all Salaries, Fees, Wages, Perquisites, or Profits whatsoever accruing by reason of such Offices, Employments, or Pensions, after deducting the Amount of Duties or other Sums payable or chargeable on the same by virtue of any Act of Parliament, where the same have been

81 Repealed by 37 & 38 Vict., c. 96.

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really and bond fide paid and borne by the Party to be charged; and each Assessment in respect of such Offices or Employments shall be in force for One whole Year, and shall be levied for such Year without any new Assessment, notwithstanding a Change may have taken place in any such Office or Employment, on the Person for the Time having or exercising the same; provided that the Person quitting such Office or Employment, or dying within the Year, or his Executors or

Administrators, shall be liable for the Arrears due before or at the Time of his so quitting such Office or Employment, or dying, and for such further Portion of Time as shall then have elapsed, to be settled by the respective Commissioners, and his Successor shall be repaid such Sums as he shall have paid on account of such Portion of the Year as aforesaid ; and each Assessment in respect of such Annuity, Pension, or Stipend shall be in force for One whole Year, unless the same shall cease or expire within the Year, by Lapse, Death, or otherwise, from which Period the Assessment thereon shall be discharged:

Second. — The said Duties to be assessed by the respective Commissioners for all the Offices in each Department in the Place where the said Commissioners shall execute their Offices, although certain of the Offices in the same Department may be executed elsewhere, and shall be due and payable from the respective Officers, and their respective Successors, for the Time being :

Third.— — The said Duties shall be paid on all public Offices and Employments of Profit of the Description herein-after mentioned within Great Britain; (videlicet^) any Office belonging to either House of Parliament, or to any Court of Justice, whether of Law or Equity, in England or Scotland, Wales, the Duchy of Lancaster, the Duchy of Cornwall, or any Criminal or Justiciary or Ecclesiastical Court, or Court of Admiralty, or Commissary Court, or Court-martial ; any public Office held under the Civil Government of Her Majesty, or in any County Palatine, or the Duchy of Cornwall; any Commissioned Officer serving on the Staff, or belonging to Her Majesty's Army, in any Regiment of Artillery, Cavalry, Infantry, Royal Marines, Royal Garrison, Battalions, or Corps of Engineers or

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Royal Artificers ; any Officer in the Navy, or in the Militia of-Volunteers ; any Office or Employment of Profit held under any Ecclesiastical Body, whether Aggregate or Sole, or under any public Corporation, or under any Company or Society, whether Corporate or not Corporate ; any Office or Employment of Profit under any public Institution, or on any public Foundation, of whatever Nature or for whatever Purpose the same may be established ; any Office or Employment of Profit in any County, Riding, or Division, Shire or Stewartry, or in any City, Borough, Town Corporate, or Place, or under any Trusts or Guardians of any Fund, Tolls, or Duties to be exercised in such County, Riding, Division, Shire, or Stewartry, City, Borough, . Town Corporate, or Place; and every other public Office or Employment of Profit of a public Nature :

Fourth. — The Perquisites to be assessed under this Act shall be deemed to be such Profits of Offices and Employments as arise from Fees or other Emoluments, and payable either by the Crown or the Subject, in the Course of executing such Offices or Employments, and may be estimated either on the

Profits of the preceding Year, or of the fair and just Average of One Year of the Amount of the Profits thereof in the Three-Years preceding; such Years in each Case respectively ending on the Fifth Day of April in each Year, or such other Day of each Year on which the Accounts of such Profits have been usually made up :

Fifth. — In all Cases where any Salaries, Fees, Wages, or other Perquisites or Profits, or any Annuities, Pensions, or Stipends, shall be payable at any public Office, or by any Officer of Her Majesty's Household, or by any of Her Majesty's Receivers or Paymasters, or by any Agent employed in that Behalf, the Duties chargeable under this Act in respect of such Salaries, Fees, Wages, Perquisites, or Profits, or in respect of such Annuities, Pensions, or Stipends, shall be detained and stopped out of the same, or out of any Money which shall be payable upon such Salaries, Fees, Wages, Perquisites, or Profits, or upon such Annuities, Pensions, or Stipends, or for the Arrears thereof, whenever the same shall happen, and be applied to the Satisfaction of the Duties on such Offices or Em-

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ployments, or on such Annuities, Pensions, or Stipends respectively, (not being otherwise paid,) in the Manner directed by this Act; and whenever the same so payable shall be assessed by the Commissioners for General Purposes in their respective Districts, they shall transmit an Account of the Amount of the Duty assessed to the Office where the same are payable, in order that the Amount so assessed may be there stopped or detained :

Sixth. — In all Cases where the Salaries, Fees, Wages, Allowances, or Profits of any Officer chargeable to the said Duties shall not arise out of any of the Offices mentioned in the foregoing Rule, but shall arise from any other Office or Employment of Profit chargeable to the said Duties, and the Salaries, Fees, Wages, Perquisites, or Profits shall be payable at such Office by any Officer thereof, or by any Receiver of the same respectively, or by any Agent employed in that Behalf, the Duties chargeable under this Act in respect of such Salaries, Fees, Wages, Perquisites, or Profits shall be detained and stopped out of the same, or out of any Money which shall be paid upon such Salaries, Fees, Wages, Perquisites, or Profits, or for Arrears thereof, whenever the same shall happen, and be applied to the Satisfaction of the Duties (not otherwise paid) in the Manner directed by this Act :

Seventh. — Such Portion of the said Duties on Offices or Employments of Profit, or on Annuities, Pensions, or Stipends, as are charged with any Sum of Money payable to any other Person, shall be deducted out of the Sum payable to such other Person as a like Rate on such Sum would amount unto; and all such Persons, their Agents and Receivers, shall allow such Deductions and Payments upon Receipt of the Residue of such Sums:

Eighth. — Such Portion of the said Duties charged on any Office or Employment of Profit executed by any Deputy or Clerk, or other Person employed under the Principal in such Office, and paid by such Principal out of the Salary, Fees, Wages, Perquisites, or Profits of such Principal, shall be deducted out of the Salary or Wages so payable as a like Rate on such Salary or Wages would amount unto; and all such Deputies, Clerks, and other Persons so employed shall allow

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to their respective Principals such Deductions and Payments— upon the Receipt of the Residue of such Salaries or Wages :

Ninth. — In estimating the Duty payable for any such Office or Employment of Profit, or any Pension, Annuity, or Stipend, all official Deductions and Payments made upon the Receipt of the Salaries, Fees, Wages, Perquisites, and Profits thereof^ or in passing the Accounts belonging to such Office, or upon the Receipt of such Pension, Annuity, or Stipend, shall be allowed to be deducted, provided a due Account thereof be rendered to the said Commissioners, and proved to their Satisfaction:

Tenth. — In all Cases where any Annuity or Pension shall be payable out of any particular Branch of the public Revenue, and at the Office of that Branch of Revenue, the Commissioners acting for that Department shall have Authority to assess and levy the same as a Salary or Wages payable thereout.

CXLVIII. And be it enacted. That every Person to be assessed for his Office or Employment shall be deemed to have exercised the same at the Head Office of the Department under which such Office or Employment shall be held, and shall be rated for such Office or Employment as if exercised at such Head Office, although the Duties of such Office or Employment shall be performed, or the Profits or any Part thereof arising from such Office or Employment shall be payable elsewhere, within or out of Great Britain; and all Assessments made on any inferior Officer, wherever he shall exercise his Office or Employment, shall be rated accordingly in the same District where such Head Office shall be established; and every Office shall be deemed to belong to and to be assessed by or under the principal Officers of that Department by or under whom the Appointment to such Office was made, provided that where such Appointment shall be made by any inferior Officer in any Department, then such Office shall be assessed by the same Commissioners by whom such inferior Officer shall be chargeable for his Office : Provided that where any such Appointment shall be held under the Great Seal or Privy Seal, either of England or Scotland, or shall be made under the Royal Sign Manual, or where any such Appointment shall be under the Hands or

Seals of the Commissioners of Her Majesty's Treasury/* and the same shall not be exercised in the Department of the Treasury, then the Officer holding the same shall be assessed in that Department where the Office shall have been executed: Provided also, that nothing herein contained shall be construed to limit the Right herein-before given to Commissioners of the District of assessing Officers before described within their respective Jurisdictions, although such Officers, or any of them, may not be held under their Appointment, or the Profits of such Offices may not be payable by them or their Order.

CXLVIII. Provided always, and be it enacted. That nothing herein contained shall extend or be construed to extend to charge any Person resident in Ireland with the Duties contained in the said Schedule (E.) in respect of any public Office or Employment the Duties whereof are necessarily and permanently performed in Ireland?^

CXLIX. Provided always, and be it enacted. That the like Allowances shall be granted to the Trustees of the British Museum, in respect of any Charge under Schedule (A.) to be made on the Lands and Tenements vested in such Trustees, as are granted to Colleges and other Properties mentioned in 'So. VI. of that Schedule; and the like Exemptions shall be allowed in respect of any Dividends of Stock vested in such Trustees, or any of them, or in any other for their Use, as are granted to charitable Institutions by this Act ; and no Salary or Payment made or to be made out of Her Majesty's Exchequer to such Trustees for the Use of such Institutions shall be charged at the said Exchequer, provided all Salaries of Officers or Persons employed under the said Trustees shall be charged on the said Officers respectively.

CL. And be it enacted. That the several Commissioners authorized to act in the Execution of this Act in relation to the Duties on Offices or Employments of Profit, and on Pensions or Stipends, as soon after their Appointment respectively as conveniently can be done in their respective Departments, shall

38 The words "Commissioners of 33 Repealed by 37 & 38 Vict., c. her Majesty's" have been repealed 96.
by 53 & 54 Vict., c. 51.

meet in some convenient Place, in order to qualify themselves by taking the Oaths prescribed by the said recited Acts relating to the Duties of Assessed Taxes, and shall have Power to elect a Clerk and Assessors, and in Cases where the Duties cannot be stopped and detained at the Department of Office of the said Commissioners, or for which the said respective Commissioners shall act. Collectors of the said Duties to be assessed by them from and amongst the Officers in their respective Departments,

and separate Assessors and Collectors in each such Department, under the Cognizance of the same Commissioners, which Assessors shall, within a Time to be fixed by the respective Commissioners, deliver to them their Certificates of Assessment, in Writing under their Hands, to be verified upon their Oaths, of the full and just annual Value of all Offices and Employments of Profit chargeable under this Act in the Department for which they shall be appointed Assessors, and of all Pensions and Stipends, estimated according to this Act, with the Names and Surnames of the several Officers and Persons entitled to Pensions or Stipends, and the several Sums of Money they ought to pay by virtue of this Act, at the Rate of Seven-pence for every Twenty Shillings of such Value, without Abatement or Deduction, and without Concealment or Favour, upon pain of Forfeiture for every Neglect in the Premises of any Sum not exceeding One hundred Pounds nor less than Twenty Pounds, which said Assessors are hereby strictly enjoined and required, with all Care and Diligence, to charge and assess themselves, and all other Officers, Clerks, and Persons employed in their respective Departments of Office, and with respect to the Duty on Pensions or Stipends to charge and assess all Persons entitled unto any such Pensions or Stipends, and respectively to make their Assessments according to the Provisions of this Act ; and every such Assessor shall have free Access to all Documents and Papers whatever in their respective Offices touching the Salaries, Fees, Wages, Perquisites, and Profits of any Officer, Clerk, or Person aforesaid, belonging to their respective Offices, and touching the Amount of the respective Pensions or Stipends, and shall be at liberty, whenever the same may be necessary, to require Returns from the Par-

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ties themselves, according to the Provisions of this Act, that they may be enabled to make a true Assessment in pursuance thereof.

CLI. Provided always, and be it enacted, That no Person shall, in respect of the Profits arising from Offices or from Pensions or Stipends chargeable before the respective Commissioners appointed for those Purposes in their respective Departments of Office as aforesaid, be liable to the Penalty herein contained for not returning a Statement of the Profits arising from such Office, Pension, or Stipend, in pursuance of any general Notice herein-before directed, nor in any Case except where the Assessor for those Profits respectively shall have required a Return thereof in pursuance of the next preceding Clause.

CLII. And be it enacted. That in every Case where any Person holding such Offices or Employments, or being entitled unto any Pension or Stipend as aforesaid, shall claim to be exempt from such Assessment, the Commissioners shall nevertheless set down in such Assessment the Names of such Persons, and the full and just annual Value of such Offices, Employ-

ments, Pensions, or Stipends ; and the Claim to such Exemption shall be preferred and examined, and the Merits thereof shall be heard and determined, under the Regulations of this Act with respect to other Assessments.

CLIII. And be it enacted. That where any Office or Employment of Profit chargeable by this Act is or shall be executed by Deputy, such Deputy shall, in all Cases where he shall be in the Receipt of the Profits thereof, be answerable for and shall pay such Assessment as shall be charged thereon, and deduct the same out of the Profits of such Office or Employment ; and where the Salaries, Fees, Wages, Emoluments, or Profits of any Officer or Officers in any such Office shall be receivable by any One or more of the said Officers for the Use of such Officer, or as a Fund to be divided amongst such Officers in certain Proportions, the Officer or Officers receiving such Salaries, Fees, Wages, Perquisites, or Profits shall be answerable for the Duties charged thereon, and shall pay the same, and

deduct the same out of the Funds provided for such respective Foster Income Tax. - 67.

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Offices or Employments, before any Division or Apportionment thereof, and in case of Refusal or Nonpayment thereof shall be liable to such Distress as by this Act is prescribed against any Person having the Office or Employment, and to all other Remedies and Penalties respectively herein contained.

CLIV. And be it enacted. That the proper Officers, or their respective Deputies, and the Receivers and Paymasters in every public Department of Office, and in every other Office for which Commissioners are hereby intended to be appointed for raising the Duties hereby charged on such Offices respectively, and any Agent by whom any Salaries, Fees, Wages, Perquisites, or Profits shall be payable, shall, upon Request to him made by the Assessors of the said Duties, deliver gratis true Lists or Accounts of all such Salaries, Fees, Wages, Perquisites, and Profits received by him, and belonging to such Officers respectively, and of all Pensions and Stipends payable to them respectively, for the better Guidance of the said Assessors in charging the same ; and if the said Assessors shall be dissatisfied with such Accounts it shall be lawful for them to require any Officer whose Office shall not be truly valued in such Account to prepare and produce to them, within the like Period of Time as is limited for the Returns of other Accounts by this Act, a List or Account of the Salaries, Fees, Wages, Perquisites, and Profits of the Office exercised by him, which Returns such Officer shall be obliged to make under the Penalties and Forfeitures contained in this Act for not making other Returns hereby required ; and from the Documents and Papers in their respective Offices the said Assessors shall make their Assessment upon the Persons holding such Offices, or entitled unto such Pensions respectively, according to the annual Value

thereof, and shall in like Manner as is before directed with respect to Assessors for any Parish or Place bring in their said Assessments to the respective Commissioners for their Allowance, who shall forthwith set their Hands to the same, which Assessments shall be in force for One Year, commencing and payable at the like Periods as the Assessments in Parishes are made payable; and the said respective Commissioners for the Duties on Offices shall, in all Cases where Collectors are au-

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thorized to be appointed, cause the like Duplicates to be made thereof, and delivered to Collectors, with like Warrants to collect the said Duties, as are before directed to be given to Collectors for any Parish or Place; and the said Collectors of the said Duties on Offices shall have the like Authority to demand and levy the said Duties as is herein given to Collectors of any Parish or Place: Provided always, that in all Cases where the Duties, and any Salaries, Fees, Wages, Perquisites, or Profits of any public Office shall be detained and stopped out of the same, or out of any Monies which shall be paid thereupon, the respective Commissioners shall cause the like Duplicates to be delivered to the proper Officers in the respective Offices, who shall keep true Accounts of all Monies stopped and detained under the Authority of this Act, and shall be answerable for the same ; and the Money so detained of the Duty on Annuities, Pensions, or Stipends shall be accounted for and paid in the Manner herein-after directed.

CLV. And be it enacted, That where any Person having, using, or exercising any Office or Employment of Profit which shall be charged to the Duties by this Act granted thereon, and the said Duties cannot be detained and stopped in the Hands of the proper Officer, or in the Hands of any Agent employed to pay the Monies due in respect of the said Office or Employment, or the same Monies shall have been paid over to the Person having, using, or exercising the said Office or Employment, and such Person shall refuse or neglect to pay the Sum of Money charged upon him, the Commissioners for raising the Duties on the said Offices shall and may, by Writing under their Hands and Seals, certify such Neglect or Refusal, and the Sum payable by virtue of this Act, to the Commissioners for executing this Act, in relation to Lands, Tenements, and Hereditaments, in the Parish or Place where such Officer shall reside; and such last-mentioned Commissioners are hereby authorized and required, upon Receipt of such Certificate, by Warrant under their Hands and Seals, to authorize and empower the respective Collectors of the said Duties, or the Collectors of the Parish or Place where such Officer shall reside, to levy the same, by such Ways and Means as they are authorized to

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levy the Duties charged by them respectively in pursuance of this Act; and such Collectors are hereby required to execute such Warrant accordingly, and which shall be executed under the like Powers and in like Manner as is herein-after directed, and as if such Officer were charged to the said Duties in such Parish or Place ; and the Monies arising thereby shall be paid to the Collectors charged to the said Duties on such Office or Employment.

CLVI. Provided always, and be it enacted. That no Qualification shall be required of any of the Officers or Persons herein described to be Commissioners for the Duties on Offices, or on Employments of Profit, or on Pensions, Stipends, Annuities, Interests, or Dividends, contained in the said several Schedules, who shall act as such Commissioners by virtue of their several Offices, other than such Offices respectively; any thing herein contained to the contrary notwithstanding.

CLVII. And be it enacted. That the respective Assessors and Collectors appointed to raise and assess, or levy, collect, and pay, the Sums of Money to be charged on Offices or Employments of Profit, or on Annuities, Pensions, or Stipends payable by Her Majesty by virtue of this Act, and also the Inspectors and Surveyors acting in relation to the said Duties, shall respectively be subject to the Penalties and Forfeitures for refusing or neglecting the Performance of their Duty, or for being guilty of any Fraud or Abuse in executing the same, as are inflicted on such Officers respectively for the like Offences by the said Acts relating to the Duties of Assessed Taxes.

CLVIII. Provided always, and be it enacted, That such of the said Duties granted by this Act which may be detained or stopped and deducted out of the Sums in respect whereof they shall be charged or deducted shall be respectively detained at such Times in each Year as the said Sums shall be payable to the Person entitled thereto.

CLIX. And be it enacted. That in the Computation of Duty to be made under this Act in any of the Cases before mentioned, either by the Party making or delivering any List or Statement required as aforesaid, or by the respective Assessors or Commissioners, it shall not be lawful to make any other Deductions

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therefrom than such as are expressly enumerated in this Act, nor to make any Deduction on account of any annual Interest, Annuity, or other annual Payment to be paid to any Person out of any Profits or Gains chargeable by this Act, in regard that a proportionate Part of the Duty so to be charged is allowed to be deducted on making such Payments, nor to make any Deduction from the Profits or Gains arising from any Property herein described, or from any Office or Employment of Profit, on account of Diminution of Capital employed or of Loss sustained in any Trade, Manufacture, Adventure, or Con-

cern, or in any Profession, Employment, or Vocation.

CLX. And be it enacted. That if any Difference shall arise between Tenant and Landlord, or any other Persons to whom any Interest, Rent, Kent-charge, Annuity, Fee Farm Rent, Rent Service, Quit Rent, Feu Duty, or other Rent or annual Payment shall be payable, touching the Sums to be deducted there-out on account of the Duties hereby charged having been paid, or between the Occupier for the Time being and any former Occupier of any Lands, Tenements, Hereditaments, or Heritages, his Executors, Administrators, or Assigns, touching the Proportion of Duty to be paid or allowed by either Party, the respective Commissioners for General Purposes in their several Districts shall have Authority and they are hereby required to settle the Proportions of such Payments and Deductions as shall be according to the Directions of this Act, and in default of Payment to levy the same respectively under the like Powers as they might have levied the same if the Assessment had been made in the same Proportions, and to pay over the same to the Collector or Party, as the Case may require ; and the Judgment and Determination of such Commissioners shall be final.

CLXI. And be it enacted. That the several Inspectors and Surveyors appointed or to be appointed shall be and they are hereby empowered respectively to inspect and examine all and every the Returns made by any Person under the Directions of this Act; and in ease any of them shall be dissatisfied either with the Returns so made, or the Estimate of the Assessor thereon, or shall discover any Error or Omission in such Estimate, or that any Deduction hath been allowed not authorized by this

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Act, they shall charge the same, according to the best of their Judgment, in the full Amount at which the same ought to be charged; and the said Inspectors and Surveyors shall also be at liberty respectively to inspect and examine all and every the Assessments of the said Duties, or any of them, made imder the Authority of the respective Commissioners before mentioned, as well before as after the Commissioners shall have signed and allowed the said Assessments, and before such Allowance to correct and amend such Assessments, if they shall respectively think fit ; and every Person in whose Custody such Returns are is hereby required, upon the Request of any such Inspector or Surveyor as aforesaid, to deliver the same into his Custody, for the Purposes of this Act, taking his Receipt for the same, and every Person in whose Custody any such Assessments shall be is also hereby required, upon the Request of such Inspector or Surveyor as aforesaid, to produce the same, and such Inspector or Surveyor is hereby authorized to take charge of the same until he shall have taken such Copies of or Extracts from the same as may be necessary for his better Information ; and every Person wilfully obstructing such Inspector or Surveyor in the due Performance of his Duty as aforesaid shall forfeit the Sum of Fifty Pounds ; and if any such Inspector or Surveyor shall find

or discover, upon his Survey or Examination, or otherwise, that any Person, Corporation, Company or Society who ought to be charged with the said Duties or any of them, shall have been omitted to be charged therewith, or shall have been under-rated in the Assessment, or that any Person, or the Officer of any Corporation, Company, or Society, liable to the said Duties or any of them, being required so to do, hath neglected or refused to make a Return according to the Directions of this Act, or that the Assessors have neglected to require a Return in any Case where a Return ought to have been required from any Person, Corporation, Company, or Society, according to the Intent of this Act, so that such Person, Corporation, Company, or Society shall not have been fully charged to the said Duties, then and in every such Case the said Surveyor or Inspector shall certify the same in Writing under his Hand, together with an Account of every Default, and the full Amount of the Duty which ought

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to be paid by way of Surcharge, to the said respective Commissioners for putting in execution this Act in relation to the Duties on which such Surcharge shall be made, in the Manner and under and subject to the Rules and Regulations prescribed and contained in the said Two several recited Acts of the Forty-eighth and Fiftieth Years of the Reign of King George the Third, herein-before recited or referred to.

CLXII. And be it enacted, That upon every Surcharge allowed upon Appeal by the said Commissioners, upon the Certificate of the Inspector or Surveyor, as directed by this Act, in Cases where no such Declaration shall have been delivered as in the said recited Act of the Fiftieth Year of the Reign of King George the Third is required, or the Commissioners shall be dissatisfied with the same, the Assessment shall be made in Treble the Rate of Duty prescribed in the said respective Schedules of this Act on the Amount of the Duty surcharged : Provided always, that if upon Appeal such Declaration as aforesaid shall have been delivered, and if the said Commissioners shall be satisfied therewith, and shall be of opinion that there was any reasonable Cause of Controversy on the Part of the Appellant on the Subject Matter of Appeal, and. that the Party hath not been guilty of any wilful Default, Neglect, or Omission, nor wilfully done any Act with Intention to defraud the Revenue, it shall be lawful for the said Commissioners who shall have determined the said Appeal, although they shall confirm or allow the Surcharge, or a Part thereof only, at the same Time to remit and strike off the Whole or any Part of the said Treble Duty; and the Overplus of the Sum so charged above the said Rate or Duty, and which shall not be so remitted or struck off as aforesaid, shall be paid to the Officer for Receipt, to the Use of Her Majesty; which Increase the Duty, made by occasion of such Surcharge, together with the Overplus aforesaid above the said Rate of Duty, and all other Increase of Duty occasioned by the Surcharge or Information of any Inspector or Surveyor under this Act, the Commissioners for executing this Act who

shall have confirmed such Surcharge or made such Increase shall at the same Meeting certify under their Hands to the Commissioners of Stamps and Taxes, who shall have Authority, under

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and subject to such Rules and Regulations as shall have been made by the Commissioners of Her Majesty's Treasury in that Behalf, to direct the said Officer for Receipt to pay to the said Inspector or Surveyor, out of the Increased Duty and Overplus aforesaid, such Sum of Money as shall appear to the said Commissioners of Stamps and Taxes to be an adequate Reward for the Labour and Diligence of the said Inspector or Surveyor.

CLXIII. Provided always, and be it enacted, That any Person charged or chargeable to the Duties granted by this Act, either by Assessment, or by way of Deduction from any Rent, Annuity, Interest, or other annual Payment to which he may be entitled, who shall prove before the Commissioners for General Purposes, in the Manner herein-after mentioned, that the aggregate annual Amount of his Income, estimated according to the several Rules and Directions of this Act, is less than One hundred and fifty Pounds, shall be exempted from the said Duties, and shall be entitled to be repaid the Amount of all Deductions or Payments on account thereof in the Manner herein-after directed, except so much of such Duties as the Person claiming such Exemption shall or may be entitled to charge against any other Person, or to deduct or retain from or out of any Payment to which such Claimant may be or become liable ; and such Exemption shall be claimed and proved, and the Proceedings thereiipon shall be had, before the Commissioners for General Purposes in the District where the Claimant shall reside, pursuant to and under the Powers and Provisions by which the Duties in Schedule (D.) are herein directed to be ascertained and charged, but nevertheless subject to the Rules and Directions herein-after contained.

CLXIV. And be it enacted, That every Person claiming to be entitled to such Exemption as last aforesaid shall, within the Time to be limited as herein-before directed for delivering in the Lists, Declarations, and Statements required by this Act (or within such further Time as the said Commissioners shall for special Cause assigned allow), deliver or cause to be delivered to the Assessor of the Parish or Place where such Claimant shall reside a Notice of his Claim for such Exemption, together with a Declaration and Statement, signed by such Claimant,

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and in such Form as may be provided under the Authority of this Act, declaring and setting forth therein all the particular Sources from whence the Income of such Claimant shall arise, and the particular Amount arising from each Source, and also

every Sum of annual Interest or other annual Payment reserved or charged thereon, whereby the Income shall or may be diminished, and also every Sum which such Claimant may have charged or may be entitled to charge against any other Person for or on account of the Duty made payable by this Act, or which he may have deducted or retained, or may be entitled to deduct or retain, under the Authority of this Act, from or out of any Payment to which he may be or become liable; which Declaration and Statement every Inspector or Surveyor shall be at liberty to peruse and examine, and to take Copies of or Extracts from, under the like Powers as in other Cases ; and in every Case where such Claim for Exemption shall be made in manner aforesaid the Assessor shall transmit such Notice, Declaration, and Statement to the said Commissioners ; and if the Inspector or Surveyor shall not object to such Declaration within Forty Days after such Transmission, or within such further Time as the Commissioners, on just Cause, shall allow to him to make such Objection, it shall be lawful for the said Commissioners to allow such Claim of Exemption, and to discharge the Assessment made upon any Property or Profits of such Person, either in his own Name or in the Name of his Lessee or Tenant, within the District of the said Commissioners; and if it shall appear that any Property or Profits of such Person is or are assessed or liable to be assessed in any other District, the said Commissioners shall certify to the Commissioners of Stamps and Taxes, in such Form as shall be provided under the Authority of this Act, the Allowance of such Exemption ; and the said last-mentioned Commissioners shall direct the Assessment made upon any Property or Profits of such Claimant, either in his own Name or in the Name of his Lessee or Tenant, in any other District, to be discharged, and the same shall be discharged accordingly : Provided always, that in case the Inspector or Surveyor shall object to any such Claim as aforesaid in Writing, suggesting to the said Additional Commissioners that he hath

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Eason to believe that the Income of such Claimant, or any other Particular required by this Act to be declared or set forth in such Declaration and Statement as aforesaid, is not truly or fully declared or set forth therein in any specified Particular, then and in such Case the Merits of such Claim for Exemption shall be heard and determined upon Appeal before the Commissioners for General Purposes, under and subject to such Rules and Regulations, and Penalties as other Appeals under this Act are directed to be heard and determined, and if such Claim shall be allowed on Appeal as aforesaid the said Commissioners for General Purposes shall grant and issue all necessary Certificates consequent thereon.

CLXV. Provided always, and be it enacted. That if it shall be proved to the Satisfaction of the Commissioners for General Purposes that any Person whose Claim for Exemption has been allowed in manner aforesaid has been charged to and has paid any of the Duties hereby granted, by way of Deduction from

any Rent, Annuity, Interest, or other annual Payment to which he may be entitled, and from which a Deduction is authorized to be made by this Act, or that such Person has been assessed and has paid such Duties in respect of any Annuity, Dividend, Pension, or Stipend payable to him out of the public Revenue of the United Kingdom, then and in such Case it shall be lawful for the said Commissioners for General Purposes to certify what shall have been so proved before them to the Commissioners for Special Purposes at the Head Office for Stamps and Taxes in England, by a Certificate, in such Form as shall be provided under the Authority of this Act, specifying and describing the Amount and the particular Nature of the Payment out of which and the Name and Place of Abode of the Person by whom such Deduction as aforesaid shall have been made, and specifying also the Amount and Description of the Annuity, Dividend, Pension, or Stipend in respect of which such Claimant has been assessed, and the Duties whereon he has paid ; and thereupon the said last-mentioned Commissioners shall issue to such Claimant an Order for the Repayment to him of the Amount of the Duties certified to have been paid as aforesaid, and such Order shall be directed to the Receiver General of

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Stamps and Taxes, or to an Officer for Receipt or Collector of the Duties granted by this Act, or to a Distributor or Sub-Distributor of Stamps, and shall authorize and require the Payment of the said Duties in like Manner as is herein-before provided with respect to the Allowances to be granted under Section V. of Schedule (A.) of this Act.

CLXVI. And be it enacted. That if any Person shall be guilty of any Fraud or Contrivance in making any such Claim, or in obtaining any such Exemption or any such Certificate as aforesaid, or shall fraudulently conceal or untruly declare any Income or Amount of Income, or any Sum which he may have charged or been entitled under the Authority of this Act to charge against any other Person, or which he may have deducted or retained, or have been or be entitled as aforesaid to deduct or retain, from or out of any Payment to which such Person claiming Exemption as aforesaid may be or become liable, or if any such Person shall fraudulently make a Second Claim for the same Cause, every such Person so offending in any of the Cases aforesaid shall forfeit the Sum of Twenty Pounds, and Treble the Duty chargeable in respect of all the Sources of his Income, and as if such Claim had not been allowed; and if any Person shall knowingly and wilfully aid, abet, or assist any such Person in committing any such Fraud as aforesaid, the Person so aiding, abetting, or assisting shall forfeit the Sum of

Fifty Pounds.

CLXVII. And be it enacted, That the annual Value of Lands, Tenements, Hereditaments, or Heritages, belonging to •or in the Occupation of any Person claiming the said Exemption, shall be estimated, for the Purpose of ascertaining his Title to such Exemption, according to the Rules and Directions contained in the said several Schedules (A.) and (B.) respectively; and that the Income arising from the Occupation by such Claimant of Lands, Tenements, Hereditaments, or Heritages chargeable under the said Schedule (B.) shall be deemed for the Purpose aforesaid to be equal in England to One Half and in Scotland to One Third of the full annual Value thereof, estimated according to the said Rules and Directions; and where such •Claimant shall be the Proprietor as well as the Occupier of

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any such Lands, Tenements, Hereditaments, or Heritages, ;!. > Amount deemed by this Act as aforesaid to be the Income ;: rising from the Occupation of such Lands, Tenements, Hereditaments, or Heritages shall be added to the Amount of the full annual Value thereof, and the aggregate Amount shall be deemed for the Purpose aforesaid to be the Income of such Claimant arising from the Lands, Tenements, Hereditaments, or Heritages of which he shall be the Proprietor and Occupier as aforesaid; and the Income arising from any Lease of or Composition for Tithes shall be deemed, for the Purpose aforesaid, to be equal to One Fourth of the full annual Value of such Tithes, estimated in manner aforesaid.^*

CLXVIII. And be it enacted, That Coparceners, Joint Tenants, or Tenants in Common of the Profits of any Property whatever, and any Joint Tenants or Tenants of Lands or Tenements in Partnership, being in the actual and joint Occupation thereof in Partnership, and entitled to the Profits thereof in Shares, and personally labouring therein, or managing the same, and any Partners carrying on Trade or exercising any Profession together, and entitled to the Profits thereof in Shares, and personally acting therein, may severally claim such Exemption according to their respective Shares and Interests in the Manner before directed; and such Claims, being duly proved to the Satisfaction of the Commissioners to whom the same are made, may be proceeded upon as in the Cases of several Interests: Provided always, that the Profits so arising shall not in any Case be charged separately to the Duty in respect of the Occupation of Lands, where Lands shall be let or underlet, without relinquishing the Possession by the Lessor, or where the Lessee or Tenant shall not be exclusively in the Possession and Occupation of the Lands so let.

CLXIX. Provided always, and be it enacted, That every such Claim for Exemption shall be made to the Commissioners of the District where the Claimant shall reside, whether such

34 The words beginning "and that concluding phrase beginning "and the income arising" and terminating the income arising"; have been repealed by 59 & 60 Viet., c. 28. "said rules and directions, and"; and the "by this Act as aforesaid"; and the

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Claimant shall be personally charged in such District or not, except where the whole Income of the Claimant shall arise from an Office or Employment of Profit the Duties whereon are cognizable before the Commissioners of a Department of Office, or from a Pension or Stipend, in all which Cases the Claim may be made to and allowed by the Commissioners of such Department wherein the said Duties are cognizable under the Regulations of this Act ; and if such Claimant shall be out of Great Britain, an Affidavit, stating the several Matters required by this Act, taken before any Person having Authority to administer an Oath in the Place where such Claimant shall reside in any Matter relating to any Part of the public Revenue of Great Britain, may be received by the respective Commissioners for executing this Act in relation to the Assessment on which such Claim shall be founded.

CLXX. And be it enacted, That any such Claim for Exemption may be made by any Guardian, Trustee, Attorney, Agent, or Eactor, on account of others, in any Case where satisfactory Proof shall be made that the Party claiming such Exemption is unable to attend in Person, or such Claim may be made by the several Persons acting in any of the Characters herein-before described, in such Manner as they may act for others, for the Purpose of being assessed on their Account in the first instance, as herein-before directed.

CLXXI. And be it enacted, That whenever any Person shall have been assessed to any of the Duties granted by this Act, whether charged on him on his own Account, or in any of the Characters herein-before described on the Behalf of any other Person, and shall, by any Error or Mistake, be again assessed for the same Cause, and on the same Account, and for the same Year, it shall be lawful for him to apply to the Commissioners for General Purposes acting for the Division or Place for which he shall have been so assessed by Error or Mistake as aforesaid, for the Purpose of being relieved from such Double Assessment, and the said Commissioners, on due Proof thereof to their Satisfaction, shall cause such Assessment, or such Part thereof as shall be a Double Charge as aforesaid, to be vacated, and which Proof may be either by a Certificate

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of the Assessment made on the Party, under the Hands of the'

Commissioners by whom he shall have been rightly assessed according to the Directions of this Act for the Matter or Cause in question, certifying that such Matter or Cause is included in an Assessment made by them on the same Party, on the same Account, and for the same Year, or by other lawful Evidence given of those Facts on the Oath of any credible Witness ; and whenever it shall be proved to the Satisfaction of the Commissioners of Stamps and Taxes that any such Double Assessment as aforesaid hath been made, and hath not been vacated, and that Payment hath been made of both Assessments, it shall be lawful for the said Commissioners of Stamps and Taxes to order and direct the Receiver General of Stamps and Taxes, or any Officer for Receipt, to repay to the Party the Sum so erroneously and doubly assessed upon him, and paid as aforesaid.

CLXXII. And be it enacted, That the respective Commissioners executing this Act in relation to any of the Duties hereby granted shall, within One Calendar Month after the First Day of hearing Appeals, all Appeals then made being first determined, issue out and deliver to the respective Collectors Duplicates of the Assessments of the aforesaid Duties charged at the respective Rates mentioned in the respective Scheduler of this Act, together with their Warrants, as directed by the said several Acts relating to the Duties of Assessed Taxes for the ' speedy and effectual levying and collecting of the said Duties assessed under this Act, as the same shall become payable, by quarterly Instalments, as herein directed, '* distinguishing the Amount charged under each of the said Schedules: Provided always, that all such Duties as shall be assessed or charged under any of the Provisions of this Act, if not paid, levied, or collected according to the Directions herein mentioned, shall be recoverable as a Debt to the Queen's Majesty, with full Costs of Suit, and all Charges and Expences attending the same; and when so recovered the said Duties shall be paid to the proper

35 The words, "by quarterly instalments as herein directed are repealed by 43 & 44 Vict., c. 19.

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Officer for Receipt, in aid of the Parish or Place answerable for the same.

CLXXIII. And be it enacted, That where any Person chargeable with the Duties hereby made payable as aforesaid shall be under the Age of Twenty-one Years, or where any Person so chargeable shall die, in every such Case the Parents, Guardians, or Tutors of such Infant, upon default of Payment by him, and the Executors and Administrators of the Person so dying, shall be and are hereby made liable to and charged with the Payments which the said Infant ought to have made, or the Person so dying was chargeable with ; and if such Parents, Guardians, or Tutors, or such Executors or Administrators, shall neglect or refuse to pay as aforesaid, it shall be lawful to proceed against them in like Manner as against any other Per-

son making default of Payment of the said Duties ; and all Parents, Guardians, or Tutors making Payment as aforesaid shall be allowed every Sum paid for such Infants in their Accounts, and all Executors and Administrators shall be allowed to deduct all such Payments out of the Assets of the Person so dying.

CLXXrV". And be it enacted. That in England the Parish or Place in which any Assessment shall have been made of the Duties granted by this Act under any of the Schedules marked respectively (A.), (B.), or (D.) shall be answerable for the Amount of the Duties which shall have been so charged in such Parish or Place, and for the said Duties being duly demanded of the respective Persons charged therewith, according to the Regulations contained in the said Acts relating to the Duties of Assessed Taxes, by the Collector appointed for such Parish or Place, and also for such Collector duly paying the Sums by him received to the proper Officer for Receipt of the said Duties, according to such Regulations ; and any of the Arrears of the said Duties by this Act granted, caused by or arising from any Neglect, Default, or Failure of any Collector for which any Parish or Place shall be answerable as aforesaid, shall be assessed within or upon such Parish or Place as soon after such Default shall be discovered as conveniently can be done, and shall be charged on the Amount of the Assessment which shall ije

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made for the same Duties in the Year commencing from the Fifth Day of April preceding the Time of making such Re-assessment, by duly apportioning the Amount of such Arrear amongst the several Persons assessed in that Year in the Assessment of the same Duties on which such Arrear shall have accrued, according to the Amount of each Person's Assessment therein, as nearly as the Case will admit, and by the like Rules, Methods, and Directions by which the original Assessment was made, to be raised and levied in such Manner as any Assessment may be by virtue of this Act raised and levied under the Regulations of the said Acts respectively.

CLXXV. And be it enacted. That if it shall happen that this Act shall not be executed previous to the Time appointed for the Payment of the first or any subsequent Instalment of the said Duties, or within the Year of Assessment, it shall be lawful for the Commissioners executing this Act who shall have made or allowed any Assessment after the Period appointed for any such Payment, which they are hereby declared to be competent to do, from Time to Time when and as the same shall be necessary, to settle and adjust at what Time and in what Proportions any Instalment of which the Time for Payment shall then have elapsed shall be paid, in such Manner as to them shall appear just and reasonable. Regard being had to the ISTumber of Days appointed for the Payment of Instalments then to come (if any) in the Year of making the Assessment; provided that on or before every quarterly Day of Payment as

herein mentioned after the making of such Assessment in the same or any subsequent Year the said Commissioners shall direct at least the Amount of Two quarterly Payments to be made, until all Arrears, either for that or any former or subsequent Year, shall have been completed.*"

CLXXVI. And be it enacted, That every Assessment to be made under this Act within the Year appointed for making the same shall be deemed to be for the current Year, and shall be in force for such Year; and every Assessment made after the Expiration of any Year in which the same ought to have been

36 Repealed by 37 & 38 Vict., c.

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made shall be deemed to be for the whole of the Year current when the Assessment ought to have been made, and such Year shall commence from the Fifth Day of April One thousand eight hundred and forty-two, for the first Assessment, and for every subsequent Assessment during the Continuance of this Act from the Fifth Day of April in such Year; and the said Duties which shall be charged in England, except where the same shall be detained and stopped at the respective Offices, shall be payable in each Year by Four quarterly Instalments at the Times following; videlicet j on or before the Twentieth Day of June for the first quarterly Instalment, on or before the Twentieth Day of September for the second quarterly Instalment, on or before the Twentieth Day of Decemier for the third quarterly Instalment, and on or before the Twentieth Day of March for the last quarterly Instalment, in each Year ; and in Scotland, the said Duties shall be payable by Two half-yearly Instalments ; videlicet, on or before the Twentieth Day of September for the first half-yearly Instalment, and on or before the Twentieth Day of March for the last Half-yearly Instalment; the Payment thereof for the first Assessment to be regulated as to the Proportion of the Sums and Times of Payment by the respective Commissioners pursuant to the Directions herein contained.^"

CLXXVII. And be it enacted. That if any Person shall come into any Parish or Place wherein such Person shall not have been before charged to the said Duties contained in any of the said Schedules for the same Year, the Assessor or Collector, or any Inspector or Surveyor, shall give or leave Notice in Writing to or for such Person to make out and deliver, within Fourteen Days next ensuing the Day of giving such ISTotice, a Declaration in Writing, signed by him with his own proper Name, which shall specify the Name of the Parish or Place and County wherein such Person shall have been assessed as aforesaid for such Year, and also to produce the Certificate

37 The introductory words "And and all of the section after and

be it enacted, that"; and the ■words including the words "and the said

"from the fifth day of April one duties which shall be charged in thousand eight hundred and forty- England"; have been repealed by two, for the first assessment, and"; 37 & 38 Vict., c. 96. Foster Income Tax. - 68.

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of such Assessment, or in default thereof to deliver a Statement for the Purpose of being assessed in such Parish or Place ; and if any such Person as aforesaid shall neglect or refuse to make out and sign and deliver such Declaration or Statement as aforesaid, within the Time before mentioned, or shall make any false or untrue Return therein in any Particular thereof, he shall forfeit a Sum not exceeding Twenty Pounds; and when in any Case it shall not appear in the Assessment of any Parish or Place for that Year that any Person residing or being therein shall have been assessed to the said Duties in the same Parish or Place, then and in such Case it shall be lawful for the respective Commissioners acting for the said District and they are hereby required to proceed in manner before directed to assess such Person to the said several Duties in like Manner in every respect as if such Person had been resident in such Parish or Place at the Time of the Publication of Notices as directed by this Act, unless such Person shall prove to their Satisfaction that he hath been duly charged in some other Parish or Place, and hath paid or satisfied the Duties so charged; and if any Person, before or after notice given to return a Statement as aforesaid, shall remove out of such Parish or Place without returning such Statement, or before an Assessment shall be made on him, with Intent to evade an Assessment, or if any Person being assessed to the said Duties shall remove out of the Parish or Place where he shall have been assessed to the said Duties without first paying or discharging all the said Duties charged upon him which shall then be due and payable, or without leaving in such Parish or Place sufficient Goods and Chattels whereon the said Duties in arrear may be raised and levied, and the same shall remain in arrear and unpaid for the Space of Twenty Days after the Time appointed by this Act for Payment thereof, every such Person shall forfeit (over and above the said Duties so left unpaid as aforesaid) the Sum of Twenty Pounds ; and in every such Case, and also in every Case where any Person shall reside in any other Parish or Place than that in which the Assessment or Charge shall be made on him in pursuance of this Act, and the same shall be in arrear and unsatisfied in the whole or in part, it shall be lawful for the Commissioners of the Dis-

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trict in which such Assessment or Charge shall have been made to certify to the Commissioners of the District within which

such Person shall reside the Amount of the Assessment or Charge made upon such Person, and remaining in arrear and unpaid as aforesaid, and such last-mentioned Commissioners shall thereupon cause the whole of the Duty so remaining in arrear and unpaid as aforesaid to be raised and levied, by and under their Warrant, together with the Costs and Charges attending the same; provided that if no such Certificate and Warrant as aforesaid shall be made and issued, or the whole of such Arrear of Duty, and Costs and Charges, as aforesaid, shall not be levied or collected in manner aforesaid, the same shall be recoverable* as a Debt to Her Majesty, together with full Costs of Suit, and all Charges and Expenses attending the same.

CLXXVIII. And be it enacted, That if any Person who ought to be charged as directed by this Act shall, by fraudulently changing or having changed his Place of Residence, or by fraudulently converting or having converted his Property, or any Part thereof, or by fraudulently releasing, assigning, or conveying, or having fraudulently released, assigned or conveyed, the same, or any Part thereof, or by making and delivering any such Statement or Schedule as aforesaid which shall be false or fraudulent, or, having any Property chargeable as aforesaid, shall fraudulently convert or shall have fraudulently converted the same, or any Part thereof, by altering or having altered any Security with relation to such Property, or by fraudulently rendering or having rendered the same, or any Part thereof,, temporarily unproductive, in order that such Person may not be charged for the same or any Part thereof, or by any Falsehood, wilful Neglect, Fraud, Covin, Art, or Contrivance whatsoever, used or practised, shall not be charged and assessed according to the true Intent and Meaning of this Act, every such Person shall, on Proof thereof before the said respective Commissioners for General Purposes acting for the District wherein such Person shall be chargeable, be charged and assessed Treble the Amount of the Charge which ought to have been made on such Person if no such Charge shall have been made; and if any such Charge shall have been made which shall be less than tha

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Charge which ought to have been made on such Person, then such Person shall be assessed and charged, over and above such former Charge, Treble the Amount of the Difference between the Sum with which such Person shall have been charged and the Sum with which he ought to have been charged, to be added to such Assessment, and applied as in other Cases as aforesaid.

CLXXIX. And be it enacted, That no Receipt, Certificate of Payment, Contract of Composition, Affidavit, Appraisement, or Valuation, made or given in pursuance and for the Purposes of this Act, shall be liable to any Stamp Duty.'

CLXXX. And be it enacted, That if any Person, upon any Examination on Oath or Affirmation, or in any Affidavit, dep-

osition, or Affirmation authorized by this Act, shall wilfully and corruptly give false Evidence, or shall wilfully and corruptly swear or affirm any Matter or Thing which shall be false or untrue, every such Person so offending, and being thereof duly convicted, shall be subject and liable to such Pains and Penalties as by the Laws in force Persons convicted of wilful and corrupt Perjury are subject and liable to ; and any Indictment or Information for Perjury committed in any such Affidavit, Deposition, or Affirmation as aforesaid, whether the same shall be taken or made within Great Britain or without shall and may be laid, tried, and determined in the County where such Affidavit, Deposition, or Affirmation shall be exhibited to the Commissioners in pursuance of this Act.'

CLXXXI. And be it enacted. That if any Person shall forge, counterfeit, or alter, or cause or procure to be forged, counterfeited or altered, or knowingly or wilfully act or assist in forging, counterfeiting, or altering, any Certificate of the Commissioners of Stamps and Taxes, or of any other Commissioners acting in the Execution of this Act, or any Certificate or Receipt which the Cashier of the Bank of England^ or the Receiver General of Stamps and Taxes, or any Officer for Receipt, is by this Act authorized to give on the Receipt of any Money payable

38 The introductory words "And '9 Repealed by the Perjury Act

te it enacted, that" and the words of 1911, 1 & 2 Geo. V, c. 6, § 17,

"contract of composition," have been and schedule thereto, repealed by 37 & 38 Vict., c. 96.

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under this Act, or shall utter any such forged, counterfeited, or altered Certificate or Receipt as aforesaid, with Intent to defraud Her Majesty, or any Body Politic or Corporate, or any Person -whomsoever, every Person so offending, and being thereof lawfully convicted, shall be adjudged guilty of Pelony, and shall be transported for a Term not exceeding Pourceen Years.

CLXXXII. And be it enacted, That if, upon the Trial of any Indictment, Information, Suit, or Prosecution whatsoever, or in any Proceeding relative thereto, under and by virtue of this Act or the said Acts herein-before recited or referred to, or for any thing done in pursuance of this Act, or for any Offence committed against this Act, or in any Matter arising out of this Act, or on Occasion thereof, any Question shall arise whether any Person be or have been or was a Commissioner or Officer of or for the said Duties hereby granted, or commissioned or appointed to act as such, then and in every such Case Proof may be made and admitted that such Person was reputed to be or had acted as such Commissioner or Officer, or acted under such Commission or Appointment, at the Time respectively when the Act, Matter, or Thing in controversy upon such Trial or other Proceeding shall happen to have been done or committed, or

omitted to have been done or performed, without producing or proving the particular Commission, Appointment, Nomination, or other Authority whereby such Commissioner or Officer was constituted and appointed; and that in every such Case such Proof shall be deemed and taken, by all Judges, Justices, or Commissioners before whom any such Trial or Proceeding shall be had, to be good and legal Evidence, unless by other Evidence the contrary shall be made to appear ; any Law or Usage to the contrary thereof notwithstanding.

CLXXXVIII. And be it enacted. That the several Assessors and Collectors shall have Three-pence in the Pound for what Money of the several Duties by this Act granted the several Collectors shall pay to the proper Officer for Receipt, to be divided in each separate Collection between the said Assessors and Collectors in equal Proportion ; and for the careful writing and transcribing the said Assessments, Warrants, Estreats, and Duplicates in due Time, and for the due, speedy, and effectual

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executing all Matters and Things directed to be performed under the said Commissioners, and for the bearing and sustaining all incidental Expences attending the Execution of this Act, under the Direction of the said respective Commissioners in their several Districts, the Clerk of the respective Commissioners, who shall perform the Duties of his Office within the respective Times limited by this Act, and shall have borne and sustained such incidental Expences, shall, by Warrant under the Hands of the said Commissioners, have and receive from the respective Officers for Receipt Two-pence in the Pound of all such Monies of the said several Duties as shall be assessed in or by virtue of such Warrants or Certificates ; and the Clerk who shall not have borne and sustained such incidental Expences shall, by like Warrant, have and receive One Penny in the Pound of all such Monies as aforesaid, provided this Act be carried into execution in due Time and in an effectual Manner for the District in which he shall be appointed the Clerk, and all Warrants or Estreats be made, and the Duplicates be delivered to the proper Officer for Receipt, and into the Head Office for Stamps and Taxes as aforesaid, within the Times limited by this Act, and not otherwise; and no Person shall under any Pretence whatever be entitled to any Part of the Reward hereby given to such Clerk, except the Assistant (if any) to such Clerk, whose Compensation shall be apportioned and settled by the respective Commissioners; nor shall such Clerk, under any Pretence whatever, demand, take, or receive any Fee, Gratuity, or Perquisite, for any Matter or Thing to be done by him by virtue and under the Authority of this Act, from any Person, other than the proper Officer for Receipt, in manner aforesaid : Provided always, that no such Compensation shall be made to any Assessor or Collector, in respect of any Sum detained or stopped under the Authority of this Act, or paid into the Bank of England, or in respect of any Sums paid by the respective Parties into the said Bank, nor to any Receiver, nor to any of

the Persons or Corporations intrusted with the Payment of Annuities, Dividends, and Shares paid out of any public Revenue of Great Britain, or elsewhere, as aforesaid, other than such Sum as shall be directed to be paid to such Collectors, Ee-

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Geivers, Corporations, or Persons aforesaid by the Warrant of the Commissioners of Her Majesty's Treasury, for their Pains and Care in executing this Act : Provided also, that it shall be lawful for the said Commissioners of Her Majesty's Treasury to cause such further Allowance to be made to such Clerk as aforesaid, who shall have faithfully performed his Duty under this Act, and shall have borne and sustained such incidental Expenses as aforesaid, of any Sum, not exceeding One Penny in the Pound on the Amount of such Part of the gross Assessment as shall have been discharged on occasion of Claims for Exemption made and allowed under this Act on the Ground of Income, as they shall, on Consideration of the Extent and Population of the District, and the Number of such Claims, think proper to direct, and the Certificate of the Commissioners of Stamps and Taxes shall be an Authority to the Officers for Receipt respectively to pay such further Allowance.*"

CLXXXIV. Provided always, and be it enacted. That notwithstanding any Neglect or Omission to pay, within any limited Period, the Duties assessed under the Authority of this Act in respect of any House or other Building, shall prevent any Person from being admitted or retained on the Register or List of Persons entitled to vote in the Election of a Member or Members to serve in Parliament for any City or Borough, or from voting at any such Election.

CLXXXV. And be it enacted. That all pecuniary Penalties imposed by this Act shall and may be sued for, recovered, and applied in such Manner and Form as is directed in regard to the pecuniary Penalties imposed by the said Acts respectively passed in the Forty-third Year of the Reign of King George the Third relating to the Duties of Assessed Taxes, the Regulations whereof are hereby made applicable to the Duties granted and the Penalties imposed by this Act; and that in any Action, Suit, or Proceeding, by or on the Behalf of Her

40 So much of this section as be- allowances, have been repealed by 37
gins with the words "and for the & 38 Vict., e. 96. The words "Corn-
careful writing" and concludes missioners of her Majesty's" have
"within the tiems limited by this beei repealed by 53 & 54 Vict., c.
Act, and not otherwise," and the 51,
concluding proviso concerning clerks'

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Majesty, for the Recovery of any such Duties or Penalties re-

spectively granted or imposed by this Act, such Duties and Penalties respectively shall be recoverable with full Costs of Suit, and all Charges and Expences attending the same: Provided always, that whenever by this Act any increased Rate of Duty is imposed as a Penalty, or as Part of or in addition to any Penalty, every such Penalty and all such increased Rate of Duty may be added to the Assessment, and be collected and levied in like Manner as any Duties included in such Assessment may be collected and levied.

CLXXXVI. And be it enacted, That all Monies arising from the Duties hereby granted (the necessary Charges of raising and accounting for the same excepted) shall be paid into the Bank of England to the Credit of an Account, in the Name of the Receiver General of Stamps and Taxes, to be opened and kept for that Purpose, distinct and apart from all other Monies, and shall be transferred to the Credit of Her Majesty's Exchequer, in such Manner, at such Times, and under such Authority, Rules and Regulations, as are or may be appointed or made with regard to any other Monies arising from Duties under the Care or Management of the Commissioners of Stamps and Taxes : Provided always, that out of the Monies from Time to Time to arise from the said Duties it shall be lawful for the Commissioners of Her Majesty's Treasury to settle and appoint such Salaries and Allowances for the Service, Pains and Labour of the Commissioners for Special Purposes, Inspectors, Surveyors, and other Officers to be employed in the Execution of this Act, and otherwise in relation thereto, and also to discharge such incident Charges and Expences attending the Execution of this Act, as the said Commissioners of Her Majesty's Treasury shall think fit and reasonable in that Behalf."

CLXXXVII. And be it enacted, That no Letters Patent granted by Her Majesty or any of Her Royal Progenitors, or

*I The words preceding the pro- words "Commissioners of her Majesty and the phrase "out of the esty's" and "said Commissioners of moneys from time to time to arise her Majesty's," have been repealed from the said duties," have been re- by 53 & 54 Viet., c. 51. repealed by 37 & 38 Viet., >. 96. The

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to be granted by Her Majesty, to any Person, City, Borough, or Town Corporate within this Realm, of any Manner of Liberties, Privileges, or Exemptions from Subsidies, Tolls, Taxes, Assessments, or Aids, nor any Statute granting any Salary, Annuity, or Pension to any Person free of any Taxes, Deductions, or Assessments, shall be construed or taken to exempt any Person, City, Borough, or Town Corporate, or any of the Inhabitants of the same, from the Burden and Charges of any

of the Duties granted by this Act ; and all non obstantes in such Statutes or Letters Patent made or to be made in bar of this Act are hereby declared to be void and of none Effect; any such Statutes, Letters Patent, Grants, or Charters, or any Clause of non obstante, or other Matter or Thing therein contained, or any Law or Statute, to the contrary notwithstanding.

CLXXXVIII. And be it enacted, That every Provision in this Act contained, and applied to the Duties in any particular Schedule, which shall also be applicable to the Duties in any other Schedule, and not repugnant to the Provisions for charging, ascertaining, or levying the Duties in such other Schedule, shall, in charging, ascertaining, and levying the same, be applied as fully and effectually as if the Application thereof had been so expressly and particularly directed; any thing herein contained to the contrary notwithstanding.

CLXXXIX. And be it enacted. That the Schedule herein-after mentioned, marked (P.), shall be deemed a Part of this Act, as if the same had been inserted under a special Enactment; provided that the several Oaths therein mentioned shall be deemed and understood and taken to refer only to the Duties contained in Schedule (D.) as aforesaid.

Schedule (F.)

Form of an Oath or Affirmation to be taken by the Commissioners for the Purposes of this Act, and by Additional Commissioners, and Commissioners for Special Purposes, acting in the Execution thereof, in respect of the Duties contained in Schedule (D.)

"I A. B. do swear [or affirm, as the Case may be], That I will truly, faithfully, impartially, and honestly, according to the

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best of my Skill and Knowledge, execute the Powers and Authorities vested in me by an Act passed in the Year of the Keign of Queen Victoria] intituled [here set forth the Title of this Act], and that I will exercise the Powers intrusted to me by the said Act in such Manner only as shall appear to me necessary for the due Execution of the same; and that I will judge and determine upon all Matters and Things which shall be brought before me under the said Act without Favour, Affection, or Malice; and that I will not disclose any Particular contained in any Schedule or Statement delivered with respect to any Duties charged under the Provisions and Regulations relating to Schedule (D.) of the said Act, or any Evidence or Answer given by any Person who shall be examined, or shall make Affidavit, Deposition, or Affirmation respecting the same, in pursuance of the said Act, excepting in such Cases and to such Persons only who shall be sworn to the due Execution of this Act, and where it shall be necessary to disclose the same for the Purposes of the said Act, or to the Commissioners of

Stamps and Taxes,*^ or in order to or in the course of a Prosecution for Perjury committed in such Examination, Affidavit, Deposition, or Affirmation. So help me GOD."

Eorm of Oath or Affirmation to be taken by Inspectors and Surveyors as aforesaid.

"I A. B. do swear _or affirm]. That in the Execution of an Act passed in the Tear of the Reign of Queen Victoria,

intituled [here set forth the Title of this Act], I will examine and revise all Statements, Schedules, and Declarations delivered within my District, and in objecting to the same I will act according to the best of my Information and Knowledge, and that I will conduct myself without Favour, Affection, or Malice, and that I will exercise the Powers intrusted to me by the said Act in such Manner only as shall appear to me to be necessary for the due Execution of the same, or as I shall be directed by the Commissioners of Stamps and Taxes, or any Two or more

*2 Now the Commissioners of Inland Revenue,

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■of them ; and that I will not disclose any Particular contained in any Statement or Schedule, with respect to any Duties charged under the Provisions and Eegulations relating to Schedule (D.) of the said Act, or any Evidence or Answer given by any Person who shall be examined, or shall make Affidavit, Deposition, or Affirmation respecting the same, in pursuance of the said Act, except in such Cases and to such Persons •only who shall be sworn to the due Execution of the said Act, and where it shall be necessary to disclose the same for the Purposes of the said Act, or to the Commissioners of Stamps and Taxes,*' or in order to or in the course of a Prosecution for Perjury committed in such Examination, Affidavit, Deposition, or Affirmation. So help me GOD."

Eorm of Oath or Affirmation to be taken by Assessors as aforesaid.

"I A. B. do swear \^or affirm], That in the Execution of an Act passed in the Year of the Eeign of Queen Victoria,

intituled An Act [here set forth the Title of this Act], I will in all respects act diligently and honestly, and without Favour or Affection, to the best of my Knowledge and Belief, and that I will not disclose any Particular contained in any Statement or Schedule delivered to me in the Execution of the said Act, with respect to any Duties charged under the Provisions and Eegulations relating to Schedule (D.) of the said Act, except in such Cases and to such Persons only who shall be sworn to the due Execution of the said Act, and where it shall be necessary to disclose the same for the Purposes of the said Act, or in order to or in the course of a Prosecution for Perjury

committed in any Matter relating to such Statement or Schedule. So help me GOD."

Form of Oath or Affirmation to be taken by the Collectors and Officers for Receipt.

"I A. B. do swear [or affirm], That in the Execution of an Act passed in the Year of the Reign of Queen Victoria,

43 Ibid.

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intituled An Act [here set forth the Title of this Act], I will not disclose any Assessment or the Amount of any Sum paid or to be paid by any Individual under the said Act, or the Books of Assessment which shall be delivered to me in the Execution of the said Act, with respect to any Duties charged under the Provisions and Regulations relating to Schedule (D.) of the said Act, except in such Cases and to such Persons only who shall be sworn to the due Execution of the said Act, and where it shall be necessary to disclose the same for the Purposes of the said Act, or to the Commissioners of Stamps and Taxes,** or in order to or in the course of a Prosecution for Perjury committed in relation to the said Duties.

So help me GOD."

Form of Oath or Affirmation to be taken by a Clerk or Clerk's Assistant to the Commissioners aforesaid.

"I A. B. do swear [or affirm]. That I will diligently and faithfully execute the Office of a Clerk _or Assistant Clerk, as the Case may be,] according to an Act passed in the Year

of the Reign of Queen Victoria, intituled An Act [here set forth the Title of this Act], to the best of my Knowledge and Judgment ; and that I will not disclose any Particular contained in any Statement, Declaration, or Schedule, with respect to the Duties charged under the Provisions and Regulations relating to Schedule (D.) of the said Act, or any Evidence or Answer given by any Person who shall be examined, or shall make Affidavit, Deposition, or Affirmation respecting the same, except in such Cases and to such Persons only who shall be sworn to the due Execution of the said Act, and where I shall be directed so to do by the Regulations of the said Act, or any Two or more of the Commissioners under whom I act, or of the Commissioners of Stamps and Taxes, *° or in order to and in the course of a Prosecution for Perjury committed on such Examination, Affidavit, Deposition, or Affirmation.

So help me GOD."

44 Ibid. *° ■'***<'•

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CXO. And be it enacted, That the Schedule marked (G.)

■with the Rules and Directions therein contained, shall, in making Returns of the Amount of annual Value or Profits on which any Duty is chargeable under this Act, so far as the same are respectively applicable to the Case of each Person, Corporation, Company, or Society described or mentioned in this Act, on behalf of themselves, and also of others for whom they act in any of the Characters described in this Act, or herein-after mentioned, be observed by each such Person, Corporation, Company, or Society, or by his or their Agents or Officers, in the Cases where such Agents or Officers are authorized to make such Returns.

SCHEDULE (G.)

I. — By every Occupier of Lands, Tenements, Hereditaments, or Heritages throughout Great Britain,*^ to be charged under Schedules (A.) and (B.), or either of them.

A Statement of the Rent and annual Value, or the annual Value, as the Case shall require, of all Lands, Tenements, and Hereditaments, or Heritages, occupied in every Parish or Place, distinguishing the Proportions in each Parish or Place, and estimating separately such as are occupied as Owner or Tenant, and also such as are held under different Landlords, and also such as are chargeable by the Rent or annual Value, or on the Amount of Profits; and also estimating separately the Rent or annual Value chargeable in respect of the Property, and the Amount chargeable in respect of the Occupation, distinguishing the same, as follows: (videlicet^)

Lands and Tenements occupied as Owner:

Lands and Tenements let at Rack Rent within Seven Years :

Lands and Tenements let at Rack Rent before the Period of Seven Years, with the Rent and annual Value thereof estimated separately :

Lands and Tenements let, but not at Rack Rent, with the Rent and annual Value thereof estimated separately :

46 Now the United Kingdom, see 16 & 17 Vict., c. 34, § 5, infra.

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The Amount at which such Lands and Tenements are rated to the Poor:

The Amount of the Composition, Rent, Rent-charge, or annual Payment paid in the preceding Year to the Rector or

Vicar or other Person, for Tithes of the above Lands and Tenements :

The Amount of each Deduction claimed in respect thereof,, and stating if Tithe-free in Part or in the Whole, and the Amount of any Modus for Tithes or Real Composition.

II. - By every Lay Impropiator, and by every Ecclesiastical Rector, Vicar, or other Person (describing himself) receiving any Tithes in Kind, or any Payments in right of the Church, or by Endowment, or in lieu of any Tithes, and on all Teinds in Scotland, to be charged under Schedule (A.), distinguishing the same as follows:

The Amount of the Profits from Tithes taken in Kind for One Year, on an Average of Three Years :

The Amount of Dues and money Payments in right of the Church, or by Endowment, or in lieu of Tithes not arising from Lands, on the above Average:

The Amount of Compositions, Rents, and Payments in lieu of Tithes, arising from Lands for the preceding Year.

III. - ^By every Person, Corporation, or Company carrying on any Concern herein-after mentioned, or their Agents or Officers, in the Cases authorized to be charged under Schedule (A.)

The Amount of Profits from Quarries of Stone, Slate, Limestone, or Chalk, in the preceding Year :

Of Iron Works, Salt Springs or Works, Alum Mines or Works, Waterworks, Streams of Water, Canals, Inland Navigations, Docks, Drains, Levels, Fishings, Rights of Markets and Fairs, Tolls, Railways and other Ways, Bridges and Ferries, in the preceding Year:

Of Mines of Coal, Tin, Lead, Copper, Mundic, Iron, and other Mines, on an Average of Five \ears.

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IV. - By every Lord or Lady of a Manor or other Koyalty, or Tenant of the same.

The Amount of all Dues and other Services or other casual Profits (except Rents and annual Payments) of such Manors- or Royalties, on an Average of Seven Years.

V. - ^By the Receiver of any Fine paid in consideration of a Demise of Lands or Tenements (except Customary) to he charged under Schedule (A.)

The Amount of such Fines in the preceding Year, or for

such lesser Period since the Interest thereon commenced, and
an Estimate of the average Value for One Year.

VI. - By every Person entitled to Profits arising from Lands[^]
Tenements, Hereditaments, or Heritages, not before
stated to be charged under Schedule (A.)
The Amount, on a fair Average, to be allowed by the respec-
tive Commissioners.

VII. - By or for every Person carrying on any Trade, Manu-
facture, Adventure, or Concern in the Nature of Trade,,
to be charged under Schedule (D.)
The Amount of the Balance of the Profits thereof, upon a
fair and just Average of Three Years, or for such shorter
Period as the Concern has been carried on,

VIII. - By every Person exercising any Profession, Employ-
ment, or Vocation, to be charged under Schedule (D.)
The Amount of the Balance of the Profits, Gains, and Emol-
uments thereof within the preceding Year."

IX. - By every Person entitled to Profits of an uncertain Value,
not before stated, to be charged under Schedule (D.)
The full Amount of the Profits or Gains arising therefrom
within the preceding Year.

«Now the balance of the profits, See Income Tax Act of 1853. 16 S[^]
gains and emoluments upon a fair 17 Vict., c. 34, § 48, intra.
and just average of three years.

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X. - By every Person receiving in Great Britain Interest from
Securities out of Great Britain, to be charged under
Schedule (D.)
The full Amount that has been received, or will be received[^]
as far as the same can be computed in the current Year.

XI. - By every Person receiving in Great Britain Profits from
Possessions out of Great Britain, to be charged under
Schedule (D.)

The full net Amount annually received therefrom, either by
Remittances, or Importation of Property, or Money or Value
from Property not imported, or on Credit, or on account in

respect of Remittances, Property, or Value, on an Average of the Three preceding Years.

XII. — By every Person entitled to any annual Profits not falling under any of the foregoing Rules, and not charged by any of the other Schedules, to be charged under Schedule (D.)

The full Amount thereof received annually, or according to the Average directed to be taken by the Commissioners on a Statement of the Nature of such Profits, and the Grounds on which the Amount has been computed, and the Average taken to the best of the Party's Knowledge and Belief.

XIII. — Declarations to be delivered in respect of the Duty to be charged under Schedule (D.)

First.— Declaration by the precedent acting Partner, or by the Agent, if none of the Partners are resident in Great Britain, of the Names of the several Partners, their respective Residences, and the Place of carrying on the Trade or Concern, or exercising the Profession, and the Style or Description of the Firm:

Second. — Declaration by any Partner, not being the precedent acting Partner, of his being assessed with the Firm, describing the same, and the Place where the Return of the precedent Partner was made :

Third. — Declaration which may be made by each Partner

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desirous of being and entitled to be separately assessed, describing the Firm, and his Proportion of the Profits.

XIV. — Statement of Profits of any Office not chargeable by Commissioners specially appointed in the Department where the Office is held.

The Amount of the Salary, Fees, Wages, Perquisites, and Profits of Office in the preceding Year, or on an Average of Three Years, as the Case shall require.

The like Statement to be delivered to the Commissioners appointed in the Department, if required.

XV. ^General Declaration by each Person returning a Statement of Profits under Schedules (A.) (B.) (D.) or (E.)

Declaring the Truth thereof, and that the same is fully stated on every Description of Property or Profits included in the Act relating to the said Duties, and appertaining to the Party, estimated to the best of his Judgment and Belief, according to the Directions and Rules of this Act.

XVI. - ^List and Declaration for facilitating the Execution of the Act in relation to the Duties chargeable on others.

First. - List containing the Name of every Lodger or Inmate in any Dwelling House, with the ordinary Place of Residence of such Lodger or Inmate, if he shall have any ordinary Place of Residence elsewhere, at which he is desirous of being assessed :

Second. - List of every Person in the Service or Employ of any Master or Mistress, whether resident in his or her Dwelling House or not, and the Place of Residence of those not residing with the Master or Mistress :

Third. - List to be delivered by every Trustee, Factor, Agent, Receiver, Guardian, Tutor, Curator, or Committee of the IS^ame and Place of Residence of the Person for whom they act in such Character, describing him, and the Names of them who are joined in Trust:

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Fourth. - Declaration on whom the Duty is chargeable in respect of such Trust:

Fifth. - List containing the proper Description of every Corporation, Company, Fraternity, Fellowship, Society, or Trust for which any Person is answerable as Treasurer, Auditor, or Receiver, and where any Person before described is answerable for the Duty to be charged in respect of the Property or Profits of others, such Lists as aforesaid shall be delivered, together with required Statements of such Profits.

XVII. - Lists, Declarations, and Statements of Discharge, or in order to obtain Exemptions.

First. — Declaration of the Amount of Value or Property or Profits returned, or for which the Claimant hath been or is liable to be assessed:

Second. — Declaration of the Amount of Eents, Interests, Annuities, or other annual Payments, for which the Party is liable to allow and deduct the Duty, with the Names of the respective Persons by whom such Payments are to be made, distinguishing the Amount of each Payment:

Third. — Declaration of the Amount of Interest, Annuities, or other annual Payments, to be made out of the Property or Profits assessed on the Claimant, distinguishing each Source :

Fourth. — Statement of the Amount of Income derived according to the Three preceding Declarations.

Fifth. — Statement of any Payment which the Claimant may be liable to make, and out of which he may be entitled to deduct or retain any Portion of the Duty charged upon him, and of any Charge which he may be entitled to make against any other Person for any Portion of such Duty.

CXCI. And be it enacted, That wherever by this Act any Appointment is directed or authorized to be made, or any Act, Matter, or Thing whatever is required to be done or performed, by the Commissioners of Her Majesty's Treasury, every such Appointment, Act, Matter, and Thing may lawfully be made, done, and performed respectively by any Three or more of the said Commissioners for the Time being; and wherever any Order, Consent, Authority, or Direction of the said Commissioners of Her Majesty's Treasury is prescribed or required by this Act, every such Order, Consent, Authority, and Direc-

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tion may be signified either under the Hands of any Three or more of the said Commissioners, or under the Hand of One of their Secretaries or Assistant Secretaries ; and wherever any of the Powers and Authorities given by this Act are required or directed to be put in execution, or any Assessment, Warrant, Order, Precept, Notice, Certificate, Contract of Composition, or other Document is by this Act or any Act herein recited or referred to is required or directed to be made, signed, or issued by the Commissioners for General Purposes, or the Additional Commissioners, or the Commissioners for Special Purposes, or the Commissioners for Stamps and Taxes, or any other Commissioners acting in the Execution of this Act, every such Power and Authority shall and may lawfully be put in execution, and every such Assessment, Warrant, Order, Precept, Notice, Certificate, Contract, or other Document shall and may lawfully be made, signed, and issued respectively by any Two or more of the said respective Commissioners ; provided that where any Act, Matter, or Thing is directed or authorized to be done or performed by or before One of such respective Com-

missioners, such Act, Matter, or Thing may lawfully be done or performed by or before such One Commissioner, any thing herein contained notwithstanding.*'

CXCII. And be it enacted. That wherever in this Act, with reference to any Person, Matter, or Thing, any Word or Words is or are used importing the Singular Number or the Masculine Gender only, yet such Word or Words shall be understood to include several Persons as well as one Person, Females as well as Males, Bodies Politic or Corporate as well as Individuals, and several Matters or Things as well as one Matter or Thing, unless it be otherwise specially provided, or there be something in the Subject or Context repugnant to such Construction ; and that wherever the Terms and Expressions following occur in this Act they shall be construed respectively in the Manner herein-after directed; (that is to say,) that the Expression "Her Majesty" shall be construed to mean and include Her Majesty, Her Heirs and Successors; the Expression "Com-

*' All of this section which pre- under the hands of any three or cedes the words "wherever any or- more of the said commissioners, or," der," and the words "said Commis- have been repealed by 53 & 54 sioners of her Majesty's" and "either Vict., c. 51.

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missioners of Her Majesty's Treasury" shall mean and include the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any Three or more of them, or the Lord High Treasurer of the said United Kingdom for the Time being; the Term "Affidavit" and the Term "Oath" shall respectively mean and include an Affirmation in the Case of Quakers or other Persons entitled by Law to make an Affirmation in lieu of an Affidavit or Oath ; the Term "England" shall mean and include England and Wales and Berwiclc-upon-Tweed.'^

CXCIII. And he it enacted. That this Act shall commence and take effect from and after the Fifth Day of April One thousand eight hundred and forty-tv70, and, together with the Duties therein contained, shall continue in force until the Sixth Day of April One thousand eight hundred and forty-five, and no longer: Provided always, that this Act and the said Duties shall not then cease with respect to any Assessment which ought to have been made before the said last-mentioned Day, but which shall not then have been made and completed, nor with respect to any of the said Duties which shall have been assessed and shall then remain unpaid, nor with respect to any Penalty before then incurred, the said Duties shall not cease in such Districts where the Assessments for the preceding Year shall not have been completed before the said Sixth Day of April, but that all the Powers and Provisions of this Act shall continue

in force, for making and completing all such Assessments as aforesaid, and for levying and recovering the Duties so assessed or to be assessed, and all Arrears of such Duties, and also for re-assessing the same, in default of Payment in the Manner herein directed, and for the suing for, adjudging, and recovering any Penalty which shall have been or may be incurred."

CXCIV. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.'

49 So much of this section as be- 60 Repealed by 37 & 38 Vict.,
gins "the expression 'her Majesty' " c. 96.

down to and including "for the time 61 Repealed by 37 & 38 Vict., c.
being;" have been repealed by 53 96.
& 54 Vict., c. 51.

THE INCOME TAX (FOREIGN DIVIDENDS) ACT,

1842.

5 & 6 Vict. c. 80.
[5th August, 1842.]

An Act to grant Relief from the Duties of Assessed Taxes in certain cases, and to provide for the Assessing and Charging the Property Tax on Dividends payable out of the Revenue of Foreign States.

2. And whereas by an Act passed in the present session of Parliament for granting to her Majesty duties on profits arising from property, professions, trades, and offices, it is enacted, that the commissioners for special purposes in the said Act mentioned shall be commissioners, under the regulations of the said Act, for the purpose of assessing and charging the duties thereby made payable on all dividends and shares of annuities payable out of the revenue of any foreign state to any persons, corporations, companies, or societies in Great Britain which shall have been or shall be intrusted for such payment to any person, corporation, company, or society whatever in Great Britain, other than and except the several companies in the said last-recited Act mentioned, and which assessments are thereby directed to be made under and subject to the rules, regulations, and exemptions contained in Schedule (C.) of the same Act: And whereas it is expedient to provide

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more effectually for carrying into execution the powers and provisions of the said Act, so far as the same relate to the assessing and charging of the said duties on such dividends and shares of annuities as aforesaid: be it therefore enacted, that all persons intrusted with the payment of annuities, or any dividends or shares of annuities, payable out of the revenue of any foreign state to any persons, corporations, companies, or societies in Great Britain or acting therein as agents or in any other character, shall, without further notice or demand thereof, deliver or cause to be delivered into the head office for stamps and taxes in England an account in writing containing their names and residences, and a description of the annuities, dividends, and shares intrusted to them for payment, within one calendar month after the same shall have been required by public notice in the London Gazette, and shall also, on demand by the inspector authorized for that purpose by the commissioners of stamps and taxes, deliver or cause to be delivered to him, for the use of the said commissioners for special purposes, true and perfect accounts of the amount of annuities, dividends, and shares payable by them respectively ; and the said commissioners for special purposes shall make an assessment thereon under Schedule (C.) of the said last-recited Act, at the rate therein prescribed, subject to diminution on occasion of any exemptions to be allowed by the said commissioners for special purposes, giving notice of the amount of such assessments to the respective persons intrusted with such payments, who shall respectively pay the duty on the said annuities, dividends, and shares, on behalf of the persons, corporations, and companies, entitled unto the same, out of the moneys in their hands ; and they shall be acquitted of such payments in like manner, and the like proceedings in all respects shall be had under the said commissioners for special purposes, as are by the said last-recited Act directed in respect of annuities payable out of the public revenue of the United Kingdom : Provided always, that the persons intrusted with such payment shall from time to time pay the duty so assessed thereon into the Bank of England, to the account to be kept at the Bank of England with the receiver general of stamps and taxes, as directed by the said Act, and shall be answerable for such payment, and which duty so assessed shall, in default of such payment, be recoverable against

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the persons respectively intrusted with such payments, as other duties charged on the parties may be recovered against them; and if any person intrusted with the payment of any such last-mentioned annuities, or any dividends or shares thereof, in the manner herein mentioned, or acting therein as agent or in any other character, shall neglect or refuse to deliver an account of his name and residence in the manner herein directed, or, after demand, shall neglect or refuse to deliver an account as aforesaid of the amount of such annuities, dividends, and shares as he is intrusted with the payment of, or in the payment of which he shall act as agent or in any other character, he shall forfeit

the sum of one hundred pounds, over and above the duty chargeable on such annuities, shares, or dividends.

3. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

THE INCOME TAX ACT, 1853.

16 & 17 Vict. c. 34.

[June 28th, 1853.]

An Act for granting to her Majesty Duties on Profits arising from Property, Professions, Trades, and Offices.

1. From and after the fifth day of April one thousand eight hundred and fifty-three, there shall be charged, raised, levied, collected, and paid yearly unto and for the use of her Majesty, her heirs and successors, during the respective terms hereinafter limited, the several rates and duties hereinafter mentioned; (that is to say,)

For and in respect of the property in any lands, tenements, or hereditaments in the United Kingdom, and for and in respect of every annuity, pension, or stipend payable by her Majesty, or out of the public revenue of the United Kingdom, and for and in respect of all interest of money, annuities, dividends, and shares of annuities, payable to any person or persons, bodies politic or corporate, companies or societies, whether corporate or not corporate, and for and in respect of the annual profits or gains arising or accruing to any person or persons whatever resi-

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dent in the United Kingdom, from any kind of property whatever, whether situate in the United Kingdom or elsewhere, or from any annuities, allowances, or stipends, or from any profession, trade, or vocation, whether the same shall be respectively exercised in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person or persons not resident within the United Kingdom from any property whatever in the United Kingdom, or from any trade, profession, or vocation exercised in the United Kingdom, for every twenty shillings of the annual value or amount thereof, -

£ s. d-

During the term of two years from the fifth day of April one thousand eight hundred and fifty-three, the yearly duty of- - - - 007

And during the further term of two years from the fifth day of April one thousand eight hundred and fifty-five, the yearly duty of - - - - 00&

And during the further term of three years from

the fifth day of April one thousand eight hundred and fifty-seven, the yearly duty of - - 5
And for and in respect of the occupation of such lands, tenements, or hereditaments (other than a dwelling-house occupied by a tenant distinct from a farm of lands), for every twenty shillings of the annual value thereof, -

In Scotland

In England, and Ireland.

£ s. d. £ 8. d.

During the said first-mentioned term of two years, the yearly duty of ----- 00 3i 00 2J

And during the said further term

of two years, the yearly duty of 3 2J

And during the said further term of three years, the yearly duty

of _--_--_ 00 2i 00 If

2. For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting

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such duties respectively, the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several Schedules contained in this Act, and marked respectively (A.), (B.), (C), (D.), and (E.), and to be charged under such respective Schedules; (that is to say,)

SCHEDULE (A.).

For and in respect of the property in all lands, tenements, hereditaments, and heritages in the United Kingdom, and to be charged for every twenty shillings of the annual value thereof:

SCHEDULE (B.).

For and in respect of the occupation of all such lands, tenements, hereditaments, and heritages as aforesaid, and to be charged for every twenty shillings of the annual value thereof.

SCHEDULE (C).

For and in respect of all profits arising from interest, annuities, dividends, and shares of annuities payable to any person, body politic or corporate, company or society, whether cor-

porate or not corporate, out of any public revenue, and to be charged for every twenty shillings of the annual amount thereof:

SCHEDULE (D.).

For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for

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every twenty shillings of the annual amount of such profits and gains :

And for and in respect of the annual profits or gains arising or accruing to any person whatever, whether a subject of her Majesty or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or any profession, trade, employment, or vocation exercised within the United Kingdom, and to be charged for every twenty shillings of the annual amount of such profits and gains :

And for and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other Schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof:

SCHEDULE (E.).

For and in respect of every public office or employment of profit, and upon every annuity, pension, or stipend payable by her Majesty or out of the public revenue of the United Kingdom, except annuities charged to the duties under the said Schedule (C), and to be charged for every twenty shillings of the annual amount thereof.

3. Upon every fractional part of twenty shillings of the annual value or amount of the property, profits, and gains aforesaid, the like proportion of duty at the respective rates aforesaid shall be charged : Provided that no duty shall be charged of a lower denomination than one penny.

4. The duties by this Act granted shall be under the direction and management of the Commissioners of Inland Revenue for the time being, who are hereby empowered to employ all such officers or other persons, and to do all such other acts and things as may be deemed necessary or expedient for the raising, collecting, receiving, and accounting for the said duties, and for putting this Act into execution in and throughout the United

Kingdom, in the like and in as full and ample a manner as they are authorized to do with relation to any other duties under their care and management.

5. The said duties hereby granted shall be assessed, raised, levied, and collected under the regulations and provisions of the Act passed in the session of Parliament held in the fifth and

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sixth years of her Majesty, chapter thirty-five, and of the several Acts therein mentioned or referred to, and also of any Act or Acts subsequently passed explaining, altering, amending, or continuing the said first-mentioned Act; and for this purpose all the said several Acts shall be revived, and shall be deemed to have been and to be continued in force from the fifth day of April one thousand eight hundred and fifty-three ; and all such of the said regulations and provisions as have been enacted by the said Acts, or any of them, with reference to Great Britain or England, shall (so far as the same are or may be applicable consistently with the express provisions of this Act) be and the same are hereby extended to Ireland; and all powers, authorities, rules, Regulations, directions, penalties, clauses, matters, and things contained in or enacted by the said several Acts before recited or referred to, or any of them, shall notwithstanding that the same may have expired, severally and respectively be and become in full force and effect with respect to the duties hereby granted, and shall in all cases not expressly provided for by this Act, and so far as the same are not superseded by and are consistent with the express provisions of this Act, severally and respectively be duly observed, applied, practised, and put in execution throughout the respective parts of the United Kingdom for raising, levying, collecting, receiving, accounting for, and securing the said duties hereby granted, and for auditing the accounts thereof, and otherwise relating thereto, as fully and effectually to all intents and purposes as if the same powers, authorities, rules, regulations, directions, penalties, clauses, matters, and things were particularly repeated and re-enacted in the body of this Act with reference to the said duties hereby granted, and respectively applied to the several parts of the United Kingdom as aforesaid; and wherever in the said Acts, or any of them, the term "England" is used or mentioned, the same, in relation to the duties granted by this Act, shall be deemed to extend to and to mean also Ireland; and in like manner the term "Great Britain" shall be read as and deemed and construed to mean the United Kingdom; and where in the provisions of the said Acts her Majesty's Court of Exchequer & Westminster, or any of her Majesty's Courts of Record at Westminster, is or are mentioned or referred to, such provisions shall, with reference to the duties under this Act to be assessed

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in Ireland, be construed and take effect as if her Majesty's Court of Exchequer at Dublin, or her Majesty's Superior Courts of Record at Dublin, were mentioned or referred to instead of the said respective courts at Westminster; and the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, and the Acts explaining, altering, amending, and continuing the same, and this Act, shall be construed.1 and read together as one Act.

6. Provided always, that nothing in the said first-mentioned Act contained shall be deemed or construed to extend to exempt any person, although not resident in any part of the United Kingdom, from the duties granted by this Act in respect of the profits or gains received from or out of any possessions or securities in Ireland, or to exempt any person resident in any part of the United Kingdom from the said duties in respect of the profits or gains received from or out of any possession or securities in any other of her Majesty's dominions, or any foreign possessions or securities.

7. Provided also, that the duties in respect of interest arising from securities in Ireland, and in respect of possessions in Ireland, which by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, are directed to be charged and assessed respectively according to certain rules prescribed for charging the duties under the head respectively of "Fourth Case" and "Fifth Case" of Schedule (D.), and in section one hundred and six of the said Act, shall under this Act be charged and assessed in Ireland in the same manner, and under the same Schedules, rules, and regulations respectively, as the duties on securities and possessions of the like nature in Great Britain are directed to be charged, except so far as such Schedules, rules, and regulations are altered or modified in regard to the assessing or charging of duties in Ireland by the express provisions of this Act.

8. Provided also, that notwithstanding anything in the said Act of the fifth and sixth years of her Majesty contained, persons holding offices in Ireland and residing in Great Britain, and persons usually residing in Ireland and serving in Parliament, shall be chargeable to the duties by this Act granted, without regard to any exemption from the duties of assessed taxes; and that this Act shall extend to charge persons resident in

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Ireland with the duties under Schedule (E.) in respect of public offices or employments, although the duties thereof are necessarily and permanently performed in Ireland.

9. The several persons chosen or appointed under the provisions of the said first-mentioned Act to be respectively commissioners for the general purposes of the said Act, and to be respectively additional or other commissioners, being respectively duly qualified in that behalf, and also the several persons ap-

pointed to be and who on the fifth day of April one thousand eight hundred and fifty-three were commissioners for the special purposes of the said Act, shall, without any further or other election, nomination, or appointment, respectively, be such commissioners as aforesaid for the like purposes under this Act; and wherever in the said Act, or in any Act relating to the duties thereby granted, mention is made of the commissioners of stamps and taxes, the same in relation to the duties granted by this Act shall be construed and deemed to designate the Commissioners of Inland Revenue: Provided that no persons shall be commissioners to supply vacancies amongst the said commissioners for general purposes except such persons as shall after the passing of this Act be chosen for that purpose in the manner provided by the said first-mentioned Act.

Interest, Dividends, etc., From Foreign Companies

10. The provision made by the Act passed in the said session of the fifth and sixth years of her Majesty, chapter eighty, section two, for the assessing and charging the duties on dividends and shares of annuities payable out of the revenue of any foreign, state, shall be and the same is hereby extended to the assessing and charging of the duties granted by this Act, as well on such dividends and shares of annuities as aforesaid as on all interest, dividends, or other annual payments payable out of or in respect of the stocks, funds, or shares of any foreign company, society, adventure, or concern, or in respect of any securities given by or on account of any such company, society, adventure, or concern, and which said interest, dividends, or annual payments have been or shall be intrusted to any person in the United Kingdom for payment to any persons, corporations, companies, or societies in the United Kingdom, and all persons in-

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trusted with the payment of any such interest, dividends, or other annual payments as aforesaid in the United Kingdom, or acting therein as agents or in any other character, shall and they are hereby required to do and perform all such acts, matters, and things, in order to the assessing and charging and paying of the said duties on all such interest, dividends, or other annual payments as aforesaid, and under and subject to the like penalty or other liability for any neglect, refusal, or default in that behalf, as by the said Act of the fifth and sixth years of her Majesty, chapter eighty, persons intrusted with the payment of annuities on any dividends or shares of annuities are required to do and perform, or are subject or liable to for any similar neglect, refusal, or default; and the assessments of the duties on all such interest, dividends, and other annual payments as aforesaid shall be made by the commissioners for special purposes under Schedule (D.) of this Act, and the said commissioners shall do and perform all such acts, matters, and things in relation to such assessments as by the said Act, chapter eighty, they are required to do or perform in relation to any assessment under the said last-mentioned Act.

PROVISIONS RELATING TO IRELAND.

As TO THE Bank of Ireland.

11. The governor and directors of the company of the Bank of Ireland shall be commissioners for executing this Act, for the purpose of assessing and charging the duties hereby granted in respect of all annuities, dividends and shares of annuities payable by the governor and company of the Bank of Ireland out of the public revenue of the United Kingdom to any persons, corporations, or companies whatever, and in respect of all profits and gains of the said company chargeable under Schedule (D.) of this Act, and in respect of all other dividends, interests, annuities, pensions, and salaries payable by the said company, and also in respect of all other profits chargeable with duty under this Act and arising within any office or department under the management or control of the said governor and company; and the said last-mentioned commissioners shall have, use, and exercise all the powers and authorities of commission-

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ers for the general purposes of this Act, so far as the same relate to the said duties to be assessed and charged by the said governor and directors, and shall make their assessments of the said duties, under and subject to the rules, regulations and exemptions contained in the said first-mentioned Act in relation to the said duties respectively : Provided always, that the duties by this Act granted shall extend to and be payable upon all annuities, dividends, and share of annuities payable in Ireland out of the revenue of the United Kingdom to or for the use or benefit of any person, whether resident in Ireland or elsewhere.

IRELAND- SCHEDS. (A.) AND (B.)

12. In order to the assessing of the duties chargeable under the respective Schedules (A.) and (B.) of this Act in Ireland, the clerk of the board of guardians of every poor law union in Ireland, or the person acting as such clerk, shall, within one month after the passing of this Act, and between the fifth day of April and the first day of June in every succeeding year,, transmit to the Commissioners of Inland Revenue, at their head office in Dublin, true copies of the last rates made by such guardians for the relief of the poor in such union, and in every electoral division thereof, and the Collector General of rates in the city of Dublin shall, in like manner and within the same period in each year, transmit to the said commissioners true copies of the last rates made for the relief of the destitute poor in the several electoral divisions or parts thereof in which he is by law authorized to make and declare such rates; and the Commissioners of Inland Revenue shall pay to the said clerk and collector respectively the cost and expense of making all such copies, not exceeding the rate of two shillings and sixpence for every one hundred ratings ; and if any such clerk or any person act-

ing as such clerk or such collector shall in any year neglect to transmit such copies in compliance with this enactment he shall for every such neglect forfeit the sum of fifty pounds.

13. The duties chargeable in Ireland under the respective Schedules (A.) and (B.) of this Act shall be charged and assessed by a poundage rate upon the annual value of all tenements and rateable hereditaments, according to the respective surveys and valuations made or to be made and from time to

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time in force for the purposes of the rates for the relief of the poor in Ireland; and the assessment of the said duties in Ireland chargeable under the said Schedule (A.) shall be made upon the landlord or immediate lessor of such tenements or rateable hereditaments, or if it shall appear to the commissioners for special purposes to be necessary or proper, the said assessment shall be made upon such person as the rate for the relief of the poor shall be made upon in respect of any such property under the provisions of the Acts in that behalf; and the assessment of the said duties chargeable under the said Schedule (B.) shall be made upon the occupier of such property : Provided always that if upon the appeal, as hereinafter mentioned, of any person deeming himself aggrieved by any such assessment, it shall be proved to the satisfaction of the commissioners, assistant barrister, chairman, or recorder, by whom such appeal shall be heard or re-heard, as the case may be, that such assessment is made upon an amount or value exceeding the annual rent at which the property in respect whereof such assessment is made is worth to be let from year to year, the person hearing or re-hearing such appeal shall give relief by reducing and abating such assessment, and charging the duties on the amount of such annual value as aforesaid, notwithstanding that the same may be less than the annual value of the premises according to any such survey or valuation as aforesaid; and if such annual value at which such property is worth to be let as aforesaid shall exceed the actual rent payable yearly by the tenant or occupier of such premises, the landlord or immediate lessor shall be assessed under Schedule (A.) upon the amount of such actual rent only, and the tenant or occupier shall be assessed under the said Schedule (A.) on the difference between that amount and, the amount of such last-mentioned annual value, subject nevertheless to any claim for exemption which the parties respectively may be entitled to: Provided also that where any person receiving rent in respect of any hereditament in Ireland exempt from being rated to the relief of the poor is liable to be rated in respect of such rent to the extent of one-half the poundage of any poor rate, the said duties in Ireland chargeable under the said Schedule (A.) shall be charged and assessed upon such person by a poundage rate upon the full amount of such rent.

14. Provided also, that if in any case it appear to the Com-

missioners of Inland Revenue that any such valuation as aforesaid for the time being in force is not correct (having reference to the principles according to which the same ought by law to have been made), with respect to all or any of the tenements or rateable hereditaments included therein, it shall be lawful for such commissioners to direct the commissioner of valuation to make or cause to be made a re-valuation of the tenements or hereditaments with respect to which the said valuation is incorrect; and such commissioner of valuation shall forthwith, with all convenient speed, make or cause to be made such re-valuation accordingly, and sign the same, and transmit it to the Commissioners of Inland Revenue ; and such re-valuation shall be made according to the principles or rules according to which such incorrect valuation ought by law to have been made ; and the duties chargeable under the said Schedules (A.) and (B.) shall, after such re-valuation, be charged and assessed according thereto; provided that if any person assessed to the last-mentioned duties according to such re-valuation deem himself aggrieved thereby, it shall be lawful for him to appeal against such assessment on the ground of the incorrectness of such re-valuation, and upon such appeal it shall be lawful for the commissioners, assistant barrister, chairman, or recorder hearing or re-hearing such appeal to alter as well such re-valuation as the assessment thereon, and make such order in relation thereto as they or he may think fit.

15. In assessing in Ireland the duties chargeable under Schedule (A.) of this Act on the landlord or immediate lessor, in every case where the amount or annual value on which the assessment is made on him is not less than the annual rent reserved or payable to him for the premises in respect of which the assessment is made, an allowance or abatement of a proportionate part of the duty shall be made in respect of the amount of the poor rates which such landlord or lessor shall have paid or borne for the same premises in the year preceding; and if the amount or annual value on which such assessment as aforesaid is made shall be less than the said rent, then such allowance or abatement as aforesaid shall be made only in respect of so much as the amount of the said poor rate added to the sum on which the assessment is made shall exceed the actual rent.

16. All assessments of the said duties under the said Schedule
Foster Income Tax. — 70.

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ules (A.) and (B.), in Ireland, shall be made by surveyors of taxes or other officers of inland revenue acting in that behalf under the directions of the Commissioners of Inland Revenue ; and every such assessment shall be made for and comprise the respective premises situate within a union, or an electoral division, or such other district as the said last-mentioned commis-

sioners shall direct ; and the same shall be signed by two of the commissioners for special purposes, who shall cause duplicates thereof, together with their warrants for the collecting and levying of the sums thereby assessed, to be delivered to such person or persons as they shall appoint to be collectors of such assessments.

17. Every such assessment in Ireland of the duties under the said Schedules (A.) and (B.) of this Act may be collected, levied, and recovered by distress by the person appointed in manner aforesaid to be the collector thereof from the person assessed, or from the occupier of the property assessed, or may be levied upon the particular premises in respect of which the assessment is made; and all goods and chattels, to whomsoever the same shall belong, found on such premises in respect of which any assessment is made of the said duties under this Act, shall be liable to be distrained and sold for the recovery of the said duties ; or such duties as aforesaid, or any arrears thereof, may be levied and recovered in the same manner as other duties assessed in Ireland under this Act may be levied and recovered : Provided always, that the duty assessed under the said Schedule (A.) upon or in respect of any tenement or hereditament may be collected, recovered, and levied by the said collector from the landlord or immediate lessor of the premises assessed, whether he be named in the assessment or not ; and to that end such collector is hereby authorised and empowered to use, exercise, and put in force against such landlord or immediate lessor all or any of the remedies, ways, and means provided by an Act of the first and second years of her Majesty, chapter fifty-six, and an Act of the sixth and seventh years of her Majesty, chapter ninety-two, or either of the said Acts, by which any rate made for the relief of the destitute poor in Ireland may be collected, recovered, or levied from any immediate lessor primarily liable to the payment of rates for premises the occupier of which is exempted from such payment : Provided also, that

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where any proceeding for the recovery of any such rate is by law required to be had or taken in the name of the guardians of a poor law union, or by the direction or with the consent of such guardians or of the Poor Law Commissioners, or by or with any other direction or consent, the like proceeding for the recovery of the said duties under this Act may be had and taken by and in the name of such collector as aforesaid, and without any such direction or consent ; provided that where any assessment under the said Schedule (A.) shall have been made upon the tenant or occupier of the premises assessed, the landlord or immediate lessor shall be liable to be proceeded against in man-

ner aforesaid only in default of payment of such assessment by the said tenant or occupier, and for the recovery of so much only of the duty assessed as shall be chargeable in respect of the rent payable yearly to such landlord or immediate lessor for the premises assessed.

18. When any landlord or immediate lessor of any tenement or hereditament in Ireland assessed to the duty chargeable under Schedule (A.) of this Act shall have paid such duty, and shall afterwards prove to the satisfaction of the commissioners for special purposes that the rent due or payable to him in respect of such tenement or hereditament for the period for which the said duty was assessed, or any portion of such rent, has been wholly and irrecoverably lost by reason of the bankruptcy, insolvency, or absconding of the tenant or occupier by whom such rent was payable, or by the fraudulent assignment or removal of his goods, or by reason of such tenement or hereditament being left waste and unoccupied, then and in such case the said landlord or lessor shall be entitled to be repaid such proportion of the said duty as he shall have paid in respect of the rent so lost; and the said commissioners shall order and direct the repayment of such proportion of duty in like manner as by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, they are authorized to order and direct the repayment of duty in other cases ; provided that such landlord or lessor shall make his claim for such repayment to the said commissioners within the period of six calendar months after the expiration of the year for which the said duty was assessed.

19. Every person having in his custody or possession any survey or valuation on which the rates for any union or electoral

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division shall be assessed or made, or any rate or assessment made under the provisions of the Acts for the relief of the poor in Ireland, or any of them, shall, at the request of any inspector, surveyor, or other officer acting in the execution of this Act in Ireland, produce and show every such survey, valuation, rate, and assessment to such inspector, surveyor, or other officer, and permit him to inspect the same, and to take copies thereof or extracts therefrom, without paying anything for the same ; and in case the person having the custody or possession of any such survey, valuation, rate, or assessment shall, on any such request as aforesaid, refuse to produce the same to such inspector, surveyor, or other officer, or to permit him to inspect the same, or to take copies thereof or such extracts as he may think fit to take therefrom, such person shall, for every such refusal, forfeit the sum of fifty pounds.

IRELAND— SCHEDS. (D.) AND (E.)

20. The assessments of the duties chargeable in Ireland under the several Schedules (D.) and (E.) of this Act shall be made by such surveyors of taxes or other officers of inland rev-

enue as the Commissioners of Inland Revenue shall appoint in that behalf; and such assessment shall be allowed and signed by the commissioners for special purposes, who shall also appoint the times and places for hearing appeals against the same as hereinafter mentioned, and shall also cause due notice of every such assessment, and of the amount thereof, and of the time and place appointed for hearing any appeal against the same, to be given by some officer of Inland Revenue to every person so assessed.

IRELAND— APPEALS AGAINST ASSESSMENTS.

21. All appeals against assessments under this Act in Ireland shall be heard and determined by the said commissioners for special purposes, or any two of them, whose determination on any such appeal shall be final and conclusive, unless the person charged by the assessment shall think himself aggrieved by such determination, and shall require that such appeal shall be re-heard as herein-after provided; and where any person

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charged by any such assessment as aforesaid, and to whom notice thereof and of the time and place appointed for hearing any appeal against the same shall be given as herein-before directed, shall neglect to appeal accordingly, such assessment shall also be conclusive; and such person shall be precluded from afterwards disputing or questioning the same.

22. If any person charged by an assessment in Ireland shall think himself aggrieved by the determination of the said commissioners for special purposes in any such appeal as aforesaid, it shall be lawful for him, on giving notice in writing to the inspector or surveyor within ten days after such determination, to require that such appeal shall be re-heard by the assistant barrister for the county or riding where such person shall have been assessed, or, in case he shall have been assessed in the county of Dublin, by the chairman of the sessions of the peace of such county, or, in case such person shall have been assessed in the city of Dublin, by the recorder of such city, or, in case such person shall have been assessed in the borough of Cork, by the recorder of such borough ; and where any such appeal shall be so required to be reheard, any statement or schedule in the possession of the said commissioners for special purposes, returned to them for the purpose of such appeal, shall be transmitted by them to the assistant barrister, chairman, or recorder (as the case may require) ; and such assistant barrister, chairman, or recorder shall with all convenient speed rehear and determine such appeal, and shall take the oath or affirmation required to be taken by a commissioner for special purposes, and shall and may have and exercise the same powers and authorities in relation to the assessment appealed against, and the determination of the matter thereof, and in relation to all matters consequent thereon, as any two or more commissioners for special purposes might have and exercise ; and his determination there-

on shall be final and conclusive.

LEELAND— COLLECTION OF THE TAX, ETC.

23. After the respective times for hearing appeals against such assessments as aforesaid in Ireland, then as to all, assessments against which appeals shall have been heard and determined, leaving any sum assessed or charged by any such assess-

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ment, and as to all assessments against which no appeal shall have been made, the commissioners for special purposes shall cause duplicates thereof, together with warrants under the hands and seals of two of the said last-mentioned commissioners, to be delivered to such officers of inland revenue or other persons as shall be named in such warrants respectively, appointing such persons to be collectors of the duties and sums of money assessed and charged in such duplicates respectively, and requiring and empowering such collectors respectively to collect, demand, levy, and recover all such duties and sums of money.

24. The commissioners for special purposes acting in the execution in this Act in Ireland in relation to the allowing or signing of any such assessment as aforesaid, and to the hearing and determining of any appeal against the same, and to the making and signing of any duplicate thereof and any warrant for collecting and levying the duties and sums of money charged or assessed thereby, and also all inspectors and surveyors of taxes and other officers of inland revenue acting in Ireland in relation to the making of any such assessment or to the assessing or charging of any person therein or thereby, and also all persons named or appointed by the said commissioners to be respectively collectors of the said duties and sums of money in relation to the collecting, levying, distraining for, or otherwise recovering of the same, shall respectively be and are hereby invested with and shall have, use, and exercise all such and the like powers and authorities as any commissioners, either for general or special purposes, or any additional commissioners, and as any inspectors, surveyors, collectors, or other officers respectively have or are invested with, or can or may use or exercise in England in relation to the making or allowing of any assessment of duties under this Act, or to the assessing or charging of any person to such duties, or to the hearing or determining of any appeal against any such assessment, or to the collecting, levying, distraining for, or otherwise recovering of any such duties, so far as such powers and authorities or any of them are applicable or may be adapted to the performance of similar acts, matters, and things in Ireland.

25. Nothing herein contained shall be construed to make any union, electoral division, or place in Ireland in which any

assessment of any duties granted under this Act shall be made, answerable for the amount of duties charged in such place, nor for any neglect or default of the collector in demanding or collecting same ; nor shall any re-assessment be made in Ireland upon any such place for any arrears or loss occasioned by any such neglect or default.

GENEKAL PEO VISIONS.

26. Where in any court or department of office there shall not be a sufficient number of officers proper to be appointed commissioners for executing this Act in relation to the duties on offices and employments of profit in such court or department of office, it shall be lawful for the Commissioners of her Majesty's Treasury to direct that the commissioners for any other department shall execute this Act in relation to the offices and employments of profits in any such court or department as aforesaid; and in default of a sufficient number of commissioners being appointed in any such court or department, and of such direction as aforesaid, the commissioners for general purposes in their respective districts in England and Scotland respectively, and the commissioners for special purposes in Ireland, shall respectively put this Act in execution in relation to the duties on offices and employments in any such court or department as aforesaid; and wherever in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, any power or direction is given to the commissioners for executing the said Act in relation to the duties on lands and tenements to execute the same in their several districts in relation to the duties on offices and employments of profit every such power and direction shall, in relation to the duties on offices and employments of profit in Ireland under this Act, be executed and carried out by the commissioners for special purposes.

27. It shall be lawful for any person who shall be duly assessed by the commissioners for special purposes for the duties on the profits and gains described in Schedule (D.) of this Act, for the first year for which the said duties are by this Act granted, to compound for the charging of the rate of duty which shall from time to time be payable under this Act for each and every year up to the fifth day of April one thousand eight hun-

dred and fifty-seven, on the same amount of such profits and gains in which he shall have been so assessed ; and it shall also be lawful for any person who shall be duly assessed as aforesaid for the year commencing from the said last-mentioned day in like manner to compound for the charging of the rate of duty which shall then be payable for each and every remaining year of the period for which the said duties are by this Act granted, on the same amount of such profits and gains in which he shall

have been so assessed as last aforesaid; and the consideration for every such composition shall be the payment, in each and every year of the said composition, of an addition to the said duties at and after the rate of one shilling for every twenty shillings of the said duties; and every such composition shall be entered into and made with the commissioners for special purposes, under and subject to the conditions, rules, and regulations (mutatis mutandis) contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in relation to compositions under the said last-mentioned Act, and the contract for the same shall be in such form as the Commissioners of Inland Revenue shall provide in that behalf.

28. The exemption granted by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, to persons whose respective incomes are less than one hundred and fifty pounds a year shall be limited and restricted under this Act to persons whose whole incomes from every source are less than one hundred pounds a year respectively : Provided always, that any person who shall be assessed or charged to any of the duties granted by this Act, or shall have paid the same either by deduction or otherwise, and who shall claim and prove, in the manner prescribed by the said Act, that his total income from every source, although amounting to one hundred pounds or upwards, is less than one hundred and fifty pounds a year for the year of the assessment of his profits or gains, shall be entitled to be relieved from so much of the said duties assessed upon or paid by him as shall exceed the rate of fivepence for every twenty shillings of his profits or gains, and such relief shall be given either by reduction or abatement of the assessment upon such person, or by the repayment to him of so much of the said excess as he shall have paid, or by both of those means, as the case may require; and in Ireland the income

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rising from the occupation of lands, tenements, or hereditaments, by any person claiming such exemption or relief as aforesaid, shall be deemed to be one third of the annual value on which the same shall be chargeable under Schedule (B.) of this Act; and all the provisions, rules, and regulations contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five in relation to the exemption of persons whose incomes are less than one hundred and fifty pounds a year, and to the reduction or abatement of any assessment upon such persons, or to the repayment to them of any duties or sums of money, shall be observed and applied, so far as the same are applicable (mutatis mutandis), to the exemption of persons whose incomes are less than one hundred pounds a year, and to the claims for relief in the manner aforesaid to persons whose incomes are less than one hundred and fifty pounds a year.

29. Provided always, that in computing the income of any person for the purposes of this Act, such computation, so far

as regards any rent derived from tenements or hereditaments in Ireland chargeable under Schedule (A), shall be made after allowing for the amount of poor rates chargeable on such rent by way of deduction or otherwise.

30. Where, on any application for relief or abatement of assessment in pursuance of the provisions contained respectively in section one hundred and thirty-three, and section one hundred and thirty-four of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, and in the third section of an Act of the fourteenth year of her Majesty's reign, chapter twelve, it shall be proved to the satisfaction of the commissioners to whom such application shall be made that the total amount of the income from every source of the person claiming such relief or abatement for the year for which such assessment was made was under one hundred pounds, such persons shall be entitled to the same relief and repayment respectively as by this Act and the said first-mentioned Act is provided in the case of persons claiming relief on the ground of their respective annual incomes being less than one hundred pounds a year.

31. In Ireland all claims of exemption by reason of the income of any person being under one hundred pounds a year,

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and all claims for relief or reduction of assessment on the ground of such income being under one hundred and fifty pounds a year, and all claims for return or repayment of any duties on either of the grounds aforesaid, or under any other of the provisions of this Act, or of the Acts herein mentioned or referred to, shall be made in such manner and form as the Commissioners of Inland Revenue shall direct and provide in that behalf; and all such claims shall be made to and shall be adjudicated and finally determined by the commissioners for special purposes, or any two of them; provided that there shall be a like appeal as regards claims for exemptions in Ireland to the assistant barrister, chairman, or recorder (as the case may require) as is herein-before contained in reference to persons charged by an assessment and feeling aggrieved thereby.

32. In assessing and charging the duties under Schedule (A.) of this Act in respect of lands, tenements, or hereditaments subject to any rent-charge under the Act for the commutation of tithes in England, or any other rent-charge in lieu of tithe, it shall be lawful for the commissioners acting in the execution of this Act, if they shall think fit, on a due return of such rent-charge being made by the owner thereof in order to an assessment upon him, to charge and assess such owner in the assessment for the said parish with the duty under Schedule (A.) of this Act in respect of such rent-charge, deducting therefrom the amount of the parochial rates, taxes, and assessments charged upon or in respect of such rent-charge in the preceding year; and in the case of such assessment being made upon the

owner of the said rent-charge, the amount of such rent-charge shall be allowed as a deduction in the assessment of the lands, tenements, and hereditaments on which the same is charged under the said Act for the commutation of tithes.

33. And whereas tithe rent-charge belonging to or held by ecclesiastical persons or bodies in Ireland is liable, in many cases, to heavy charges in respect of the tax payable to the ecclesiastical commissioners for Ireland, poor rates, the repayment of instalments for the building or repairing of glebe houses, or other charges : And whereas the deduction in respect of income tax under the provisions of this Act or the before-recited Act of the fifth and sixth years of her Majesty's reign, chapter thirty-five, made by any person paying tithe rent-charge to any

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•ecclesiastical person or body entitled to receive the same, would, under the provisions of this and the said Act, be the income tax upon the gross amount of such rent-charge ; and it is expedient and just that such ecclesiastical persons or bodies should have the benefit of the allowances hereinafter mentioned out of such gross income, and of a proportionate remission of income tax: It shall be lawful for any ecclesiastical person or body to make application to the commissioners for special purposes, setting forth the deductions or charges to which his income has been subjected during the preceding year in respect of the ecclesiastical tax aforesaid, poor rates, and the other charges and matters of the like nature and description as those in respect of which the ecclesiastical commissioners are directed to make allowances or deductions in estimating the value of a benefice or other ecclesiastical property, with a view to its taxation, under the provisions of an Act passed in the third and fourth years of King William the Fourth, chapter thirty-seven; and such person or body, on proof to the satisfaction of the commissioners for special purposes that the income of such ecclesiastical person or body has been actually subjected to such charges or deductions, shall be entitled to have repaid to him by the Commissioners of Inland Revenue the difference between the amount of income tax calculated on the gross income of such ecclesiastical person or body and the amount to which such person or body would have been liable supposing the income tax to have been assessed upon his income after deducting such charges as aforesaid.

34. Provided also, that the deduction allowed under Schedule (A.), No. v., of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, for the repairs of collegiate churches and chapels and chancels of churches, or of any college or hall in any of the universities, by any ecclesiastical or collegiate body, rector, vicar, or other person bound to repair the same, shall, in respect of the duties under Schedule (A.) of this Act, be the amount of the sum so expended in the year preceding that in which the assessment is made, instead of an average of twenty-one years, as in the said Schedule (A.), !N'o.

v., is mentioned.

35. Where any occupier for the time being of any lands, tenements, or hereditaments, being tenant thereof, shall be

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called upon and required to pay, and shall have paid, any sura or sums assessed upon or in respect of such lands, tenements, or hereditaments under the said Schedule (A.) of this Act, and which said sum or sums, or any portion thereof, ought, under the rules for charging the duties under the said Schedule, to have been paid or to be paid by any former tenant or occupier of the same lands, tenements, or hereditaments, or his executors or administrators, it shall be lawful for the said occupier for the time being to deduct and retain, from and out of any subsequent payment of rent to his landlord, the said sum or sums of money, or any portion thereof, which ought to have been or to be paid by such former tenant or occupier, or his executors or administrators as aforesaid: Provided that nothing in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, or in this Act contained shall extend to authorize the levying upon any such occupier for the time being any arrear of duty assessed under Schedule (A.) or Schedule (B.) of this Act, which ought to have been levied upon and ultimately paid and borne by any former occupier of the same lands, tenements, or hereditaments; and provided also, that nothing herein contained shall be deemed or construed to alter, prejudice, or affect any remedy given by the said rules for the recovering and levying of any such sum or sums, or any portion thereof, from or upon such former tenant or occupier, or his executors or administrators.

36. Any house or building let in different apartments or tenements, and occupied by two or more persons severally, shall nevertheless be charged to the duty under this Act as one entire house or tenement, and the assessment thereof shall be made on the landlord; but in default of payment by him the duty so charged and assessed may be levied on the occupier or occupiers respectively, and being paid by them or one of them shall be deducted and allowed out of the next or any subsequent payment on account of rent.

37. In charging the duty under Schedule (A.) of this Act in respect of lands, an allowance and deduction shall be made for the amount expended by the landlord or owner thereof on an average of the twenty-one preceding years in the making or repairing of sea walls or other embankments necessary for the preservation or protection of such lands against the encroach-

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ment or overflowing of the sea or any tidal river, although the

sums expended may not have been charged on such lands by any public rate or assessment.

38. Where in any burgh in Scotland tolls commonly known by the name of customs are levied under the authority of any Act of Parliament or charter, and are applied and expended in such burgh in or towards defraying the expenses of paving, lighting, or cleansing the same, or of the police thereof, or in or towards discharging any other similar public burdens, the duty which may have been assessed and paid under this Act upon or in respect of such tolls shall, so far as regards so much of the said tolls as shall have been so expended as aforesaid, on due proof of all the necessary facts to the satisfaction of the commissioners for special purposes, be allowed and repaid under an order of the said commissioners, in like manner as in other cases where duties are allowed and repaid under the provisions in that behalf contained in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five.

39. Provided also, that notwithstanding anything in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, contained, all lands occupied for the growth of hops shall be charged to the duties under Schedule (B.) of this Act according to the general rules contained in Schedule (B.) of the said first-mentioned Act, and not by estimating the profits of such lands according to the rules contained in Schedule (D.) of the said Act

40. Every person who shall be liable to the payment of any rent or any yearly interest of money, or any annuity or other annual payment, either as a charge on any property or as a personal debt or obligation by virtue of any contract, whether the same shall be received or payable half-yearly or at any shorter or more distant periods, shall be entitled and is hereby authorized, on making such payment, to deduct and retain thereout the amount of the rate of duty which at the time when such payment becomes due shall be payable under this Act, that is to say, sevenpence, sixpence, or fivepence, as the case may be, for every twenty shillings of such payment ; and the person liable to such payment shall be acquitted and discharged of so much money as such deduction shall amount unto, as if the amount thereof had actually been paid unto the person to whom

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such payment shall have been due and payable ; and the person to whom such payment as aforesaid is to be made shall allow such deduction, upon the receipt of the residue of such money, under pain of forfeiting the sum of fifty pounds for any refusal so to do : Provided always, that no tenant or occupier of any property chargeable under Schedule (A.) of this Act shall be entitled to deduct or retain out of the rent thereof any greater sum than the amount of the duty which shall have been assessed and charged upon or in respect of such property, and actually paid by such tenant or occupier.

41. Provided always, that whenever any person liable to the said duties chargeable in Ireland under the said Schedule (A.) shall be entitled to retain a proportionate amount of such duties from any annual payment from which he is now by law entitled to deduct any sum on account of poor rates, he shall be entitled to retain such proportionate amount only upon the net sum payable by him after the allowance for poor rates.

42. And whereas under certain Acts of Parliament advances of public money to promote the improvement of lands have been made by way of loan, and in Ireland under an Act passed in the tenth year of her Majesty, chapter ten, and any Acts amending the same, and under an Act passed in the fifth and sixth years of her Majesty, chapter eighty-nine, for river drainage, and any Acts amending the same; and the repayment thereof has been secured by a rent-charge upon such lands to be paid for a term limited by the said Acts respectively, and by which the principal sums advanced will eventually be repaid with interest thereon; and it is just that provision should be made for deducting and allowing the duty charged by this Act in proportion to such interests on the payment of such rent-charge : It shall be lawful for any person paying any such rent-charge from time to time to deduct and retain thereout in respect of the duty chargeable under this Act one third part of the sum which the rate of such duty computed on such rent-charge will amount to, and no more; and the collectors and receivers of such rent-charges are hereby required to allow such deduction upon receipt of the residue of such rent-charge then due.

43. No action of ejectment for nonpayment of rent in Ireland shall be defeated on the ground that the person liable to pay such rent is entitled, under the provisions of this Act or

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any Act incorporated therewith, to a deduction which would reduce the amount due by him under a year's rent.

44. The occupiers of lands, tenements, and hereditaments who shall make true and correct statements and returns, as required by the said Acts, of the annual value of all such lands, tenements, and hereditaments in their respective occupations, in order to an assessment of the duties chargeable thereon, under the respective Schedules (A-) and (B.) of this Act, for the year commencing from the fifth day of April one thousand eight hundred and fifty-three, shall not (unless they shall appeal against the continuance of the same assessment for any subsequent year) be required to make any further statements or returns of such annual value in respect of the same premises until the year one thousand eight hundred and fifty-seven ; and in like manner such occupiers as aforesaid who shall make true and correct statements and returns in order to an assessment of the said duties for the year commencing from the fifth day of April one thousand eight hundred and fifty-seven shall not

(unless they shall appeal against the continuance of such last-mentioned assessment) be required to make any further statements or returns in respect of the same premises for any subsequent year of the period for which the said duties are by this Act granted.

45. The assessments to be made for the year commencing from the fifth day of April one thousand eight hundred and fifty-three of the duties chargeable under the respective Schedules (A.) and (B.) of this Act shall be and remain in force, and the several sums charged and assessed therein shall be collected and levied also, for the second year for which the same duties are by this Act granted, without altering the names of the parties charged, notwithstanding any change in the occupation of the premises in respect of which any such assessment may be made ; and the same assessments reduced and abated in proportion to the reduced duties which will then be chargeable under this Act shall in like manner be collected and levied for the third and fourth years respectively ; and in like manner also the assessments to be made of the said duties for the year commencing from the fifth day of April one thousand eight hundred and fifty seven shall be and remain in force, and the several sums charged and assessed therein for the said last-

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mentioned year shall also be collected and levied for each and every remaining year of the period for which the said duties are by this Act granted : Provided always, that the continuance of any such assessment for the second or any subsequent year shall be subject to the conditions, rules, and regulations in that behalf contained in section eighty-seven of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in relation to the continuance of assessments made under that Act

46. The relief granted by the third section of the said Act of the thirteenth and fourteenth years of her Majesty, chapter twelve, to persons occupying lands for the purposes of husbandry only, and obtaining their livelihood principally from husbandry, shall be extended and granted to every person occupying lands as tenant thereof for the purposes of husbandry only, although he may not obtain his livelihood principally from husbandry, as well as to every person occupying lands for the purposes aforesaid, being the owner thereof, and obtaining his livelihood principally as aforesaid.

47. Whereas by the eighty-first section of the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, if upon appeal any dispute shall arise touching the annual value of any lands, tenements, or hereditaments, the commissioners are authorized, if they deem it necessary, to direct that a valuation thereof shall be taken and made by a person of skill to be named by the said commissioners: It shall be lawful for the appellant, as well as the said commissioners, upon any such appeal, to require that such valuation as aforesaid shall be

made ; and the said commissioners, on being required so to do by the appellant, as well as in cases where they may deem it necessary, shall name a person of skill to make such valuation ; and upon such valuation being verified on the oath of the person making the same, the assessment shall be made according thereto.

48. The duty to be charged under Schedule (D.) in respect of professions, employments, or vocations not contained in any other Schedule of this Act shall be computed on a sum not less than the full amount of the balance of the profits, gains, and emoluments of such professions, employments, or vocations upon a fair and just average of three years, instead of the amount of such profits, gains, and emoluments within the preceding

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year, as directed by the rules of Schedule (D.) in the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, but subject in all other respects to the said last-mentioned rules.

49. Any friendly society legally established under any Act of Parliament relating to friendly societies (a), and which does not assure or grant to any individual any sum or annuity to an amount which would debar such society from the benefit of the exemption granted to friendly societies by the said Act of the fifth and sixth years of her Majesty, chapter thirty-five, in respect of their stocks, dividends, and interest chargeable under Schedule (C.) of the said Act, shall be entitled to exemption under this Act, as well in respect of all their interest and other profits and gains chargeable under Schedule (D.) as in respect of their stocks, dividends, and interest chargeable under Schedule (C.) of this Act.

50. In ascertaining, estimating, or assessing the profits of any person chargeable under Schedule (D.) of this Act, either upon appeal or otherwise, it shall be lawful to estimate the value of all doubtful debts due or owing to such person ; and in the case of the bankruptcy or insolvency of the debtor, the amount of the dividend which may reasonably be expected to be received on any such debt shall be deemed to be the value thereof, and the duty chargeable under the said Schedule shall be assessed and charged upon the estimated value of all such doubtful debts accordingly.

51. In assessing the duty chargeable under Schedule (E.) of this Act in respect of any public office or employment, where the person exercising the same is necessarily obliged to incur and defray out of the salary, fees, or emoluments of such office or employment the expenses of travelling in the performance of the duties thereof, or of keeping and maintaining a horse to enable him to perform the same, or otherwise to lay out and expend money wholly, exclusively, and necessarily in the performance of the duties of his office or employment, it shall be lawful to deduct from the amount of the said salary, fees, and

emoluments to be assessed under this Act the amount of all such expenses and disbursements necessarily incurred and defrayed in manner aforesaid. In assessing the duty chargeable under any Schedule of this Act upon any clergyman or minister of any religious denomination in respect of any profits, fees, or

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emoluments of his profession or vocation, it shall be lawful to deduct from such profits, fees, or emoluments any sum or sums of money paid or expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty or function as such clergyman or minister and if such sum or sums or expenses shall not have been deducted as aforesaid, then a proportionate part of the duty, charged and paid by such clergyman or minister shall, on due proof to the commissioners of such sum or sums having been expended as aforesaid, be repaid to such clergyman or minister.

53. Where any person who shall hold or exercise any public office or employment of profit shall at any time or times during or for or in respect of any year of assessment become entitled to any additional salary, fees, or emoluments beyond the amount for which any assessment may have been made upon him, or beyond the amount for which at the commencement of such year he may have been liable to be assessed, an additional or supplemental assessment shall from time to time, as often as the case shall require, be made upon such person for such additional salary, fees, or emoluments, so that he shall be assessed and charged for the full amount of the whole of the salary, fees, and emoluments which he shall receive or become entitled to at any time and from time to time during or for or in respect of the said year of assessment.

54. Any person who shall have made insurance on his life or on the life of his wife, or shall have contracted for any deferred annuity on his own life or on the life of his wife, in or with any insurance company which shall become registered under any Act to be passed in the present session of Parliament for that purpose, and which shall comply with the requirements of such Act, and any person who shall under any Act of Parliament be liable to the payment of an annual sum, or to have an annual sum deducted from his salary or stipend, in order to secure a deferred annuity to his widow or a provision to his children after his death, shall be entitled to deduct the amount of the annual premium paid by him for such insurance or contract, or the annual sum paid by him or deducted from his salary or stipend as aforesaid, from any profits or gains in respect of which he shall be liable to be assessed under either of the Schedules (D.) or (E.) of this Act, or to have any as-

assessment which may be made upon him under either of the said Schedules reduced or abated by the deduction of the amount of the said annual premium from the amount of the profits or gains on which such assessment has been made ; or if such person shall be assessed to duties under any of the Schedules contained in this Act, and shall have paid such assessment, or shall have paid or been charged with any of the said duties by deduction or otherwise, such person on claim made to the commissioners for special purposes, and on production to them of the receipt for such annual payment, and on proof of the facts to the satisfaction of the said commissioners, shall be entitled to have repaid to him such proportion of the said duties paid by such person as the amount of the said annual premium bears to the whole amount of his profits and gains on which he shall be chargeable under all or any of the Schedules of this Act: Provided always, that no such abatement, allowance, or repayment as aforesaid shall be made in respect of any such annual premium beyond one-sixth part of the whole amount of the profits and gains of such person so chargeable as aforesaid, nor shall any such deduction or abatement entitle any such person to claim total exemption or any relief from duty on the ground of his profits and gains being thereby reduced below one hundred or one hundred and fifty pounds, as the case may be.

55. Where any person assessed or charged to any of the duties under this Act shall have removed from the district within which the assessment or charge upon him was made without having appealed against such assessment or charge in such district, it shall be lawful for the Commissioners of Inland Revenue, if they shall think fit, on the application of such person, to authorize and empower the commissioners of the district to which such person shall have removed as aforesaid to hear and determine his appeal against such assessment or charge ; and in every such case the said last-mentioned commissioners shall have full power and authority and they are hereby required to hear and determine such appeal accordingly; and any sum or sums from which such person may not be relieved on such appeal shall be recovered and levied in the same manner as if such appeal had been heard and determined by the commissioners of the district in which such assessment or charge was made.

56. If any person shall knowingly and wilfully aid, abet, or

assist, or incite or induce, any other person to make or deliver any false or fraudulent account, statement or declaration of or concerning any profits or gains chargeable under this Act, or of the yearly rent or value of any lands, tenements, or hereditaments, or of any matters or things affecting such rent or value, such persons so offending shall for every such offense forfeit the sum of fifty pounds.

57. In lieu of the allowances by the said Act of the fifth and sixth years of her present Majesty directed to be granted to the clerk of the respective commissioners for the due performance of the duties of his office, there shall be granted the following allowances respectively; (that is to say,) the clerk of the respective commissioners who shall duly perform the duties of his office within the respective times limited by law in that behalf, and shall have borne and sustained the incidental expenses mentioned in the said Act, shall, by warrant under the hands of the said commissioners, have and receive from the respective officers for receipt twopence in the pound on the net amount of the sums assessed and charged in the duplicates of assessment, after all appeals heard and determined, and all just reductions, abatements, and discharges made from such assessments and duplicates respectively; and the clerk who shall not have borne and sustained such incidental expenses shall by like warrant have and receive one penny in the pound of such net amount of the sums assessed and charged as aforesaid, after all such reductions, abatements, and discharges as aforesaid, provided he shall have duly performed the duties of his office in the manner mentioned in the said Act, and not otherwise: Provided always, that it shall be lawful for the Commissioners of her Majesty's Treasury to cause such further allowance to be made to such clerk as aforesaid who shall have faithfully performed his duty under this Act, and shall have borne and sustained such incidental expenses as aforesaid of any sum not exceeding one penny in the pound on the amount of such part of the gross assessment as shall have been discharged on occasion of claims for exemption or abatement made or allowed under this Act on the ground of income being below one hundred and fifty pounds and one hundred pounds a year respectively, as the said last-mentioned commissioners shall, on consideration of the extent and population of the district and the number of

ACT OF 16 & 17 YlCTf., C. 34. 1125

such claims, think proper to direct; and the certificate of the Commissioners of Inland Revenue shall be an authority to the officers for receipt respectively to pay such further allowance,

58. The several collectors of the duties granted by this Act in Ireland shall have and receive such rate of poundage on the money of the said duties which they shall respectively collect and pay to the proper officer for receipt, or such other reasonable remuneration for their service, pains, and labour respectively in executing this Act, as the [Commissioners of her Majesty's] treasury shall by any warrant from time to time order and direct in that behalf.

59. This Act shall commence and take effect from and after the fifth day of April one thousand eight hundred and fifty-three, and together with the duties therein contained shall continue in force until the sixth day of April one thousand eight hundred and sixty, and no longer: Provided always, that this Act and the said duties shall not then cease with respect to any

assessment which ought to have been made before the said last-mentioned day, but which shall not then have been made and completed, nor with respect to any of the said duties which shall have been assessed and shall then remain unpaid, nor with respect to any penalty before then incurred, nor with respect to any deduction of the said duties on any portion, thereof authorized by law to be made out of any rent, interest, or other annual payment which shall become due or payable before the said last-mentioned day nor with respect to any penalty for refusing to allow any such deduction, although such refusal may be after the said last-mentioned day, nor shall the said duties cease in any case where the assessments for the preceding year shall not have been completed before the said sixth day of April one thousand eight hundred and sixty, but all the powers and provisions of this Act shall continue in force for making and completing all such assessments as aforesaid, and for levying and recovering the duties so assessed or to be assessed, and all arrear of such duties, and also for re-assessing the same in default of payment in the manner herein directed, and for making and allowing such deduction as aforesaid, and for the suing for, adjudging, and recovering any penalty which shall have been or may be incurred.

1126 ACT OF 41 & 42 VICT., CH. 15.

THE CUSTOMS AND INLAND REVENUE ACT, 1878.

41 & 42 Vict. c. 15.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue.

12. Notwithstanding any provision to the contrary contained in any Act relating to income tax (a), the commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern in the nature of trade, chargeable under Schedule (D.) (&), or the profits of any concern chargeable by reference to the rules of that Schedule (c), allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern, and belonging to the person or company by whom the concern is carried on; and for the purpose of this provision, where machinery or plant is let to the person or company by whom the concern is carried on upon such terms that the person or company is bound to maintain the machinery or plant, and deliver over the same in good condition at the end of the term of the lease, such machinery or plant shall be deemed to belong to such person or company.

And where any machinery or plant is let upon such terms that the burden of maintaining and restoring the same falls upon the lessor, he shall be entitled on claim made to the commissioners for general or special purposes, in the manner pre-

scribed by section sixty-one of the Act of the fifth and sixth years of her Majesty's reign, chapter thirty-five, to have repaid to him such a portion of the sum which may have been assessed and charged in respect of the machinery or plant, and deducted by the lessee on payment of the rent, as shall represent the income tax upon such an amount as the said commissioners may think just and reasonable, as representing the diminished value by reason of wear and tear of such machinery or plant during the year : Provided, that no such claim shall be allowed unless it shall be made within twelve calendar months after the expiration of the year of assessment.

ACT OF 7

GH. 13. 1127

THE FINANCE ACT, 1907-
7 Edw. VII. c. 13.
[August 9th, 1907.]

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year.

PART V.

Income Tax.

18. - (1) Income tax for the year beginning on the sixth day of April nineteen hundred and seven shall be charged at the rate of one shilling.

(2) All such enactments relating to income tax as were in force on the fifth day of April nineteen hundred and seven shall, subject to any amendments made by this Act, have full force and effect with respect to the duty of income tax hereby granted.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A. and B. in the Income Tax Act, 1853, or of inhabited house duty, during the year ending on the fifth day of April nineteen hundred and seven, shall be taken as the annual value of such property for the same purpose during the next subsequent year ; provided that this sub-section -

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May for the fifth day of April ; and

(b) shall not apply to the Metropolis as defined by the Valuation (Metropolis) Act, 1869.

19. - (1) Any individual who claims and proves, in manner provided by this section, that his total income from all sources does not exceed two thousand pounds, and that any part of that income is earned income, shall be entitled, subject to the pro-

1128 ACT OF 7 EDW. VII., CH. 13.

visions of this section, to such relief from income tax as will reduced the amount payable on the earned income to the amount which would be payable if the tax were charged on that income at the rate of nine pence.

(2) The relief given by this section shall be in addition to and not in derogation of any exemption or other relief or abatement imder the Income Tax Acts, except that where an individual is entitled to relief from income tax under section eight of the Finance Act, 1898, or, in respect of the payment of premiums, under section fifty-four of the Income Tax Act, 1853 (as extended by any subsequent enactment), relief shall be given under this section only in respect of such earned income (if any) as remains after deducting therefrom the amount on which he is relieved of income tax under the said sections eight and fifty-four.

(3) Where relief is given under section eight of the Finance Act, 1898, or section fifty-four of the Income Tax Act, 1853, by way of repayment of the tax after relief has been given under this section, the amount repaid shall be adjusted so that the total amount of the relief given under this section and under the said sections eight and fifty-four does not exceed the amount which would have been given if the whole relief had been claimed simultaneously.

(4) An individual who desires relief under this section must, in cases where he is required to make a return for the purpose of the assessment of income tax, claim that relief at the time the return is made and must, in any case, claim that relief before the thirtieth day of September in the year for which the tax is charged.

For the purpose of making a claim for relief under this section with respect to income tax charged under this Act for the current year, any individual may, before the thirtieth day of September nineteen hundred and seven, substitute a fresh return for any return previously made by him.

(5) An individual shall not be entitled to relief under this section in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person.

(6) Subject to the provisions of this section, all the provisions of the Income Tax Acts which relate to claims for exemption.

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relief, or abatement, or the proof to be given with respect to those claims, shall apply to claims for relief under this section and the proof to be given with respect to those claims.

(7) For the purposes of this section the expression "income" means income as estimated according to the several rules and directions of the Income Tax Acts ; and the expression "earned income" means -

(a) any income arising in respect of any remuneration from any office or employment of profit held by the individual, or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not; and

(b) any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual ; and

(c) any income which is charged under Schedules B. or D. in the Income Tax Act, 1853, or the rules prescribed by Schedule D. in the Income Tax Act, 1842, and is immediately derived by the individual from the carrying on or exercise by him of his profession, trade, or vocation either as an individual, or, in the case of a partnership, as a partner personally acting therein.

In cases where a wife's profits are deemed to be profits of the husband, any reference in this provision to the individual includes either the husband or the wife.

(8) Section thirty-four of the Finance Act, 1894, shall cease to have effect so far as it gives relief or abatement to persons who are entitled to relief under section eight of the Finance Act, 1898.

20. Where an individual carrying on or exercising any profession, trade, or vocation in partnership with any other person makes any claim for exemption, relief, or abatement under the Income Tax Acts, the income of the individual from the partnership for the year to which the claim relates may be treated separately for the purpose of any such exemption, relief, or abatement, and if so treated shall be deemed to be the share to which he is entitled during the said year in the partnership

profits, such profits being estimated according to the several rules and directions of those Acts.

21. - (1) Every employer, when required to do so by notice from an assessor, shall, within the time limited by the notice, prepare and deliver to the assessor a return of the names and places of residence of any persons employed by him, to whom this provision applies, and of the payments made to those persons in respect of that employment, and section fifty-five of the Income Tax Act, 1842, shall apply with respect to any such return as it applies with respect to the lists, declarations, or statements mentioned in that section.

This provision applies to all persons employed by an employer, except persons who are not employed in any other employment, and whose remuneration in the employment for the year does not exceed the sum for the time being fixed as the limit for total exemption from income tax.

(2) Where the employer is a body of persons, corporate or unincorporate (including a company), the secretary of the body, or other officer (by whatever name called) performing the duties of secretary, shall be deemed to be the employer for the purposes of this provision, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

22. - (1) Every person upon whom notice is served in manner prescribed by section forty-eight of the Income Tax Act, 1842 (which relates to the delivery of notices by assessors), requiring him to make a return of any profits, gains, or income in respect of which he is chargeable with duty under Schedule D. or Schedule E. in the Income Tax Act, 1853, shall make a return in the form required by the notice, whether he is or is not chargeable with duty, and in default shall be liable to a penalty under section fifty-five of the Income Tax Act, 1842, accordingly :

Provided that a penalty inflicted in the case of a person proceeded against for not complying with this provision, who proves that he was not chargeable to duties, shall not exceed five pounds for any one offense.

(2) The duties imposed on officers of any corporation, company, fraternity, fellowship, or society by sections forty and fifty-four of the Income Tax Act, 1842, and by section eighteen of the Customs and Inland Revenue Act, 1879, shall, in the

case of any company, be performed by the secretary of the com-

pany or other officer (by whatever name called) performing the duties of secretary.

23. - (1) Notwithstanding anything in an Acte concerninge Informers, being chapter five of the Acts of the thirty-first year of the reig-n of Queen Elizabeth, or in sub-section (4) of section twenty-one of the Taxes Management Act, 1880, or in sub-section (2) of section twenty-two of the Inland Revenue Regulation Act, 1890, or in any other enactment, proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts may be commenced within three years next after the fine or penalty is incurred.

(2) The time during which an assessment may be amended or an additional first assessment made under section fifty-two of the Taxes Management Act, 1880 (which relates to the amendment of assessments), or during which an assessment may be made on the estate of a deceased person under section twenty-four of the Customs and Inland Revenue Act, 1890 (which relates to the power to make such assessments), shall be any time within the year of assessment or within three years after the expiration thereof, and the time during which in cases of omission to charge any person a charge may be made and allowed or signed under section sixty-three of the Taxes Management Act, 1880 (which relates to the powers of surveyors to make such charges), shall be a period of three years after the expiration of the year for which the person ought to have been charged.

(3) Nothing in this section shall affect proceedings for the recovery of fines or penalties incurred before the commencement of this Act, or extend the time during which any assessment may be made or amended, or a charge may be made on any person in respect of income tax charged under any Act passed before the commencement of this Act.

24. - (1) Section one hundred and thirty-three of the Income Tax Act, 1842, and section six of the Revenue Act, 1865 (which provide for the reduction of assessments or the repayment of duty in certain cases where the profits of the year of assessment fall short of the sum on which the assessment has been made), shall cease to have effect as respects income tax charged for the year beginning the sixth day of April nineteen hundred and seven, or for any subsequent year.

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(2) Where a person charged or chargeable with income tax in respect of any profession, trade, or vocation which has been

set up or commenced within the period of three years upon the average of which the profits or gains are to be taken under the Income Tax Acts, or within the year of assessment, proves at the end of the year of assessment to the satisfaction of the commissioners by whom the assessment has been or can be made that the actual profits or gains arising from the profession, trade, or vocation in the year of assessment fall short of the profits or gains as computed in accordance with those Acts, he shall be entitled to be charged on the actual amount of the profits or gains so arising instead of on the amount of the profits or gains so computed, and, if he has paid the full amount of the tax on the profits or gains so computed, be entitled to repayment of the amount overpaid.

(3) Where a profession, trade, or vocation is discontinued in any year, any person charged or chargeable with income tax in respect of that profession, trade, or vocation, shall be entitled to be charged on the actual amount of the profits or gains arising from the profession, trade, or vocation in that year, and shall also, if he proves to the satisfaction of the Commissioners, by whom the assessment has been or could have been made, that the total amount of the income tax paid during the three previous years in respect of that profession, trade, or vocation, exceeds the total amount which would have been paid if he had been assessed in each of those years on the actual amount of the profits or gains arising in respect of the profession, trade, or vocation, be entitled to repayment of the excess.

25. - (1) In estimating, under any Schedule of the Income Tax Acts, the amount of the profits and gains arising from any trade, manufacture, adventure, concern, profession, or vocation, no deduction shall be made on account of any royalty, or other sum, paid in respect of the user of a patent, but the person paying the royalty or sum shall be authorized, on making the payment, to deduct and retain thereout the amount of the rate of income tax chargeable during the period through which the royalty or sum was accruing due.

(2) Sub-section (3) of section twenty-four of the Customs and Inland Revenue Act, 1888, shall apply to any such royalties or sums as it applies to interest of money or annuities

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charged with income tax under Schedule D. in the Income Tax Act, 1853.

26. - (1) For the purpose of enabling deductions for wear and tear to be allowed by the additional commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the additional commissioners in assessing those profits and gains shall make such allowances in respect of those claims as they think just and rea-

sonable.

(2) No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement.

(3) Where as respects any trade, manufacture, adventure, or concern full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years.

(4) In this section the expression "deduction for wear and tear" means the deduction allowed, or which would be allowed, under section twelve of the Customs and Inland Revenue Act, 1878, as representing the diminished value, by reason of wear and tear during the year, of machinery or plant used for the purposes of any trade, manufacture, adventure, or concern.

27. Any application for relief under section twenty-three of the Customs and Inland Revenue Act, 1890, may be made either to the Commissioners for the general purposes of the Acts

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relating to income tax as provided in that section or to the Commissioners for the special purposes of those Acts, and the last-named Commissioners shall have the same power under that section as the first-named Commissioners have.

28. Where a clergyman or minister of any religious denomination pays rent for a dwelling-house, and uses any part thereof mainly and substantially for the purposes of his duty or function as such clergyman or minister, such part of the rent of the dwelling-house, not exceeding one-eighth, as the Commissioners by whom any assessment for income tax is made may allow,

shall be treated for the purposes of section fifty-two of the Income Tax Act, 1853, as expenses to which the provisions of that section as to deduction and repayment apply.

PAET VII.

General.

30. - (1) The Acts specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

Part V. of this Act shall be construed together with the Income Tax Acts, 1842 and 1853, and any other enactments relating to income tax, and those enactments and Part V. of this Act are in this Act referred to as the Income Tax Acts.

(3) This Act may be cited as the Finance Act, 1907.

THIED SCHEDULE.

ENACTMENTS REPEALED.

Session and

Chapter.

Short Title.

Extent of Repeal.

5 & 6 Vict.

The Income Tax

The third rule of the rules applying

c. 35.

Act, 1842.

to both the preceding cases in sec-

tion one hundred from "except for the purpose" to "gains of such partnership."

Section one hundred and thirty-three, except so far as it is referred to or incorporated in any other enact-

28 & 29 Viet.

The Revenue

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C.38.

Act, 1865.

Section six.

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ACT OF 10 EDW. VII., CII. 8. 1135

THE FINANCE (1909-10) ACT, 1910.

10 Edw. VII. c. 8.
[April 29th, 1910.]

An Act to grant certain Duties of Customs and Inland Revenue (including Excise), to alter other Duties, and to amend the Law relating to Customs and Inland Revenue (including Excise), and to make other financial provisions.

PART IV.

Income Tax.

65. - (1) Income tax for the year beginning on the sixth day of April nineteen hundred and nine shall be charged at the rate of one shilling and twopence.

(2) All such enactments relating to income tax as were in

force on the fifth day of April nineteen hundred and nine shall, subject to the provisions of this Act, have full force and effect with respect to any duties of income tax hereby granted.

(3) The annual value of any property which has been adopted for the purpose either of income tax under Schedules A. and B. in the Income Tax Act, 1853, or of inhabited house duty, during the year ending on the fifth day of April nineteen hundred and nine shall be taken as the annual value of such property for the same purpose during the next subsequent year ; provided that this sub-section -

(a) so far as respects the duty on inhabited houses in Scotland, shall be construed with the substitution of the twenty-fourth day of May for the fifth day of April ; and

(b) shall not apply to the metropolis as defined by the Valuation (Metropolis) Act, 1869.

(4) Section thirty-eight of the Finance Act, 1894 (which relates to duty on dividends, etc., paid prior to the passing of the Act), shall be applied with respect to the year which commenced on the sixth day of April nineteen hundred and nine, as it was applied with respect to the year which commenced on the sixth day of April eighteen hundred and ninety-four.

1136 ACT OF 10 EDW. VII., CH. 8.

66. - (1) In addition to the income tax charged at the rate of one shilling and twopence under this Act there shall be charged, levied, and paid for the year beginning on the sixth day of April nineteen hundred and nine, in respect of the income of any individual, the total of which from all sources exceeds five thousand pounds, an additional duty of income tax (in this Act referred to as a super-tax) at the rate of sixpence for every pound of the amount by which the total income exceeds three thousand pounds.

(2) For the purposes of the super-tax, the total income of any individual from all sources shall be taken to be the total income of that individual from all sources for the previous year, estimated in the same manner as the total income from all sources is estimated for the purposes of exemptions or abatements under the Income Tax Acts; but, in estimating the income of the previous year for the purpose of super-tax, -

(a) there shall be deducted in respect of any land on which income tax is charged upon the annual value estimated otherwise than in relation to profits (in addition to any other deduction) any sum by which the assessment is reduced for the purposes of collection under section thirty-five of the Finance Act, 1894, or on which duty has been repaid under the provisions of this Act relating to the repayment of duty in respect of the cost of maintenance, repairs, insurance, and management; and

(b) there shall be deducted the amount of any premiums in respect of which relief from income tax may be allowed under section fifty-four of the Income Tax Act, 1853 (as extended by any subsequent enactment) ; and

(c) there shall be deducted in the case of a person in the service of the Crown abroad, any such sum as the Treasury may allow for expenses which in their opinion are necessarily incidental to the discharge of the functions of his office and for which an allowance has not already been made;

(d) Any income which is chargeable with income tax by way of deduction shall be deemed to be income of the year in which it is receivable, and any deductions allowable on account of any annual sums paid out of the property or profits of the individual shall be allowed as deductions in respect of the year in which they are payable, notwithstanding that the income or

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the annual sums, as the case may be, accrued in whole or in part before that year.

67. Section nineteen of the Finance Act, 1907, shall apply to any individual who claims and proves, in manner provided by that section, that his total income from all sources exceeds two thousand pounds and does not exceed three thousand pounds, as if one shilling were substituted for ninepence, and as if, as respects any such individual, the thirty-first day of July nineteen hundred and ten were substituted for the thirtieth day of September nineteen hundred and seven.

68. - (1) If any individual who has been assessed or charged to income tax, or has paid income tax either by deduction or otherwise, claims and proves, in manner prescribed by the Income Tax Acts, that his total income from all sources, although exceeding one hundred and sixty pounds, does not exceed five hundred pounds, and that he has a child or children living and under the age of sixteen years at the commencement of the year for which the income tax is charged, he shall be entitled, in respect of every such child, to relief from income tax equal to the amount of the income tax upon ten pounds.

The expression "child" and the expression "children" in this provision includes stepchild or stepchildren, but does not include illegitimate child or illegitimate children: Provided that where the parents of any illegitimate child or children shall, after the birth of such child or children, have married each other, such illegitimate child or children shall be included in the expression "child" and "children."

(2) Any relief under this section shall be given either by reduction of the assessment, or repayment of the excess which has been paid, or by both those means, as the case may require.

(3) Sub-sections (2) and (3) of section nineteen of the Finance Act, 1907, shall be construed as if this section were mentioned therein as well as section eight of the Finance Act, 1898, and section fifty-four of the Income Tax Act, 1853, and the provisions of the Income Tax Acts, which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims shall apply to claims for relief under this section, and the proof to be given with respect to those claims.

69. - (1) If the owner of any land or houses to which this Foster Income Tax. - 72.

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section applies shows that the cost to him of maintenance, repairs, insurance, and management, according to the average of the preceding five years, has exceeded, in the case of land, one-eighth part of the annual value of the land as adopted for the purpose of income tax under Schedule A., and in the case of houses one-sixth part of that value, he shall be entitled, in addition to any reduction of the assessment under section thirty-five of the Finance Act, 1894, on making a claim for the purpose, to repayment of the amount of the duty on the excess, not exceeding in the case of land one-eighth part, and in the case of houses one-twelfth part, of the duty on an amount equal to the annual value.

For the purposes of this section the term "maintenance" shall include the replacement of farm-houses, farm buildings, cottages, fences, and other works where the replacement is necessary to maintain the existing rent.

(2) This section shall apply to any land (inclusive of farm-houses and other buildings, if any) the assessment on which is, for the purpose of collection, reduced under section thirty-five of the Finance Act, 1894, and to any houses the annual value of which, as adopted for the purpose of income tax under Schedule A., does not exceed eight pounds, the assessment on which is so reduced.

(3) In comparing the cost of maintenance, repairs, insurance, and management of any land or houses for the purpose of this section with the annual value of the land or houses, the total cost of the maintenance, repairs, insurance, and management on any land managed as one estate, or of any houses on any such land, shall be compared with the total annual value of the land or houses as the case may be.

(4) All the provisions of the Income Tax Acts which relate to claims for exemption, relief, or abatement, or the proof to be given with respect to those claims shall apply to claims for repayment under this section and the proof to be given with respect to those claims :

Provided that if the owner of any land or house makes and delivers to the surveyor of taxes of any district in which the land or house is wholly or partly situate a declaration as to the cost to him of maintenance, repairs, insurance, and management, and the surveyor is satisfied as to the correctness of the declaration, the amount of the allowance to which the owner

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is entitled under this section shall be certified by the surveyor, and repayment shall thereupon be made in accordance with this certificate.

(5) In computing the five-year average for the purposes of this section, the year shall be taken to be the year ending on the thirty-first day of March, or such other date as may be adopted by the owner of the land or houses with the consent of the surveyor of taxes of the district, and the five preceding years shall be taken to be those preceding the commencement of the year for which the duty in respect of which a claim for repayment is made is charged.

70. The exemption from income tax granted by the Income Tax Acts to a friendly society, and by the Trade Union (Provident Funds) Act, 1893, to a registered trade union, by the rules of which it appears that the sums assured to any person by the society or union do not exceed if by way of gross sum two hundred pounds, or if by way of an annuity thirty pounds a year, shall extend to any registered friendly society and to any registered trade union, if the society or union are restricted either by virtue of any Act of Parliament or by their rules from assuring to any person any sum exceeding three hundred pounds by way of gross sum or fifty-two pounds a year by way of annuity.

11. - (1) No exemption, abatement, or relief under the Income Tax Acts which depends wholly or partially on the total income of an individual from all sources shall be given to any person, unless the person claiming the exemption, abatement, or relief is resident in the United Kingdom :

Provided that any person who is or has been employed in the service of the Crown or who is employed in the service of any missionary society abroad or in the service of any of the native states under the protectorate of the British Crown, and any person resident in the Isle of Man or Channel Islands and any person resident abroad who satisfies the Commissioners that he is so resident for the sake of health, shall be entitled to any relief, exemption, or abatement to which he would be entitled if he were resident in the United Kingdom, and if his total income from all sources were calculated as including any income in respect of which income tax may not be chargeable as well as income in respect of which income tax is chargeable

(2) Income tax shall not be payable in respect of the m-

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terest or dividends of any securities of a foreign State or a British possession which are payable in the United Kingdom, where it is proved to the satisfaction of the Commissioners that the person owning the securities and entitled to the interest or dividends is not resident in the United Kingdom ; but, save as provided by this or any other Act, no allowance shall be given or repayment made in respect of the income tax on the interest or dividends on the securities of any foreign State or any British possession which are payable in the United Kingdom.

Relief from income tax under this sub-section may be given by the Commissioners either by way of allowance or repayment on a claim being made to them for the purpose within six months of the end of the year for which the income tax is charged.

72. - (1) The super-tax shall be assessed and charged by the Commissioners for the special purposes of the Acts relating to income tax (in this Act referred to as the Special Commissioners).

(2) Every person upon whom notice is served in manner prescribed by regulations under this section by the Special Commissioners requiring him to make a return of his total income person all sources or, in the case of a notice served upon any person who is chargeable with or liable to be assessed to income tax under section forty-one of the Income Tax Act, 1842, or section twenty-four of the Customs and Inland Revenue Act, 1890, as representing an incapacitated, non-resident, or deceased person, of the total income from all sources of the incapacitated, non-resident, or deceased person, shall, whether he is or is not chargeable with the super-tax, make such a return in the form and within the time required by the notice.

(3) It shall be the duty of every person chargeable with the super-tax to give notice that he is chargeable to the Special Commissioners before the thirtieth day of September in the year for which the super-tax is chargeable : Provided that for the purpose of this provision the thirty-first day of July nineteen hundred and ten shall, as respects the year beginning on the sixth day of April nineteen hundred and nine, be substituted for the thirtieth day of September of that year.

(4) If any person without reasonable excuse fails to make any return or to give any notice required by this section, he shall

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be liable to a penalty not exceeding fifty pounds, and after judg-

ment has been given for that penalty to a further penalty of the like amount for every day during which the failure continues. Any penalty under this provision shall be recoverable in the High Court, or in Scotland in the Court of Session.

(5) If any person fails to make a return under this section, or if the Special Commissioners are not satisfied with any return made under this section, the Special Commissioners may make an assessment of the super-tax according to the best of their judgment.

(6) All provisions of the Income Tax Acts relating to persons who are to be chargeable with duty, assessments, and appeals against those assessments, and to the collection and recovery of duty, and to cases to be stated for the opinion of the High Court shall, so far as they are applicable, apply to the charge, assessment, collection, and recovery of duty under this section, and the Special Commissioners shall, for the purpose of assessment, have any powers of an inspector or surveyor of taxes, and for the purpose of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue shall have the same powers at and upon the determination of the appeal as a surveyor of taxes has at and upon the determination of any appeal under the Income Tax Acts.

(7) The Special Commissioners may amend any assessment made by them under this section, or make an assessment or an additional assessment, during any time within the year of assessment, or within three years after the expiration thereof.

(8) The Commissioners may make regulations for the purpose of carrying this section into effect.

PART VIII.

General.

92. Application of existing enactments to licenses granted under this Act.

93. - (1) All rules and regulations made by the Treasury or by the Commissioners of Inland Revenue or by the Commis-

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sioners of Oustoins and Excise under this Act shall be laid before each House of Parliament as soon as may be after they are made, and, if an address is presented to His Majesty by either House of Parliament within the next subsequent forty days on which that House has sat next after any such rule or regulation is laid before it, praying that the rule or regulation may be annulled, His Majesty in Council may, if it seems fit, annul the rule or regulation and it shall thenceforth be void, but without prejudice to the validity of anything previously done there-

under.

(2) If any rule or regulation is so annulled any duty previously paid which, but for the rule or regulation, would not have been payable, shall be repaid by the Commissioners, without prejudice, however, to the right of the Commissioners to reassess the duty in accordance with any rule or regulation which may be substituted for the annulled rule or regulation.

94. If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

95. - (1) All assessments or charges made or other things done before the passing of this Act with a view to the collection of any duty imposed by this Act shall have the same force and effect as if this Act had been in operation at the time when the assessment or charge was made or other thing done.

(2) Any payments made before the passing of this Act on account of any duty imposed thereby, and any payments of drawback made before the passing of this Act on account of any such duty, which would have been proper payments on account of duty or proper payments of drawback if this Act had been in force at the time, shall be deemed to be payments properly made under this Act, and, if treated as such before the passing of this Act, shall be deemed to have been properly so treated, drawback made before the passing of this Act on account of any duty imposed by this Act shall not be affected by the fact that he has, before the passing of this Act, paid either directly or by way of deduction any such sum if the sum so paid

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has been subsequently refunded to him, and any such sum may without prejudice to any other remedy be recovered as a debt due to His Majesty.

(4) Where any deduction which would have been a legal deduction if this Act had been in force has been made on account of any duty imposed by this Act, and the sum deducted has subsequently been made good by the person making the deduction, that person shall not be prevented from again making the deduction.

In such a case, and also in a case where a person could have made a legal deduction if this Act had been in force on account of any duty imposed by this Act, but has not made it, the person who has made or could have made the deduction, as the case may be, shall be entitled, if there is no future payment from which the deduction may be made, to recover the sum as

if it were a debt due from the person to whom the original deduction has been made good or as against whom the deduction could have been originally made.

(5) Any reference in this section to a duty imposed by this Act includes a reference to a duty increased by this Act.

96. - (2) Any reference to "the Commissioners" in Part II., Part VI., or Part VII. of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

(4) Part IV. of this Act shall be construed together with the Income Tax Acts, 1842 and 1853, and any other enactments relating to Income Tax, and those enactments and Part IV. of this Act are in this Act referred to as the Income Tax Acts.

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

PART VII.

LEADING CASES ON INCOME TAXES UNITED STATES SUPREME COURT.

STELLA P. FLINT, as General Guardian of the Property of Samuel E". Stone, Junior, a Minor, Appt., v. STONE TEACY COMPANY et al. (No. 407.)

WYCKOFF VAN DERHOEFF, Appt., v. CONEY ISLAND & BROOKLYN ELEVATOR COMPANY et al. (No. 409.)

FRANCIS L. HINE, Appt., v. HOME LIFE INSURANCE COMPANY et al. (No. 410.)

FRED W. SMITH, Appt., v. NOETHEEN TRUST COMPANY, A. C. Bartlett, William A. Fuller, et al. (No. 411.)

WILLIAM H. MINEE, Appt., v. COEN EXCHANGE NATIONAL BANK OF CHICAGO, Charles H. Wacker,

Martin A. Eyerson, et al. (No. 412.)

CEDAE STEEET COMPANY, Appt., v. PAEK EEALTY
COMPANY. (No. 415.)

LEWIS W. JAEED, Appt., v. AMEEICAN MULTIGRAPH
COMPANY et al. (No. 420.)

JOSEPH E. GAY, Appt., v. BALTIC MINING COMPANY
et al. (No. 425.)
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PEKCY BEUNDAGE, Appt., v. BEOADWAY EEALTY
COMPANY et al. (No. 431.)

PAUL LACEOIX, Appt., v. MOTOE TAXIMETEE CAB
COMPANY et al. (No. 432.)

AETHUE LYMAN and Arthur T. Lyman, as Trustees under
the Last Will and Testament of George Baty Blake,
Deceased, Appts., v. INTEEBOEOUGH EAPID
TEANSIT COMPANY et al. (No. 442.)

GEOEGE WENDELL PHILLIPS, Appt., v. EIFTY ASSO-
CIATES et al. (No. 443.)

OSCAE MITCHELL, Appt., v. CLAEK LEON COMPANY.
(No. 446.)

WILLIAM H. FLUHEEE, Albert W. Durand, and Howard
H. Williams, Appts., v. NEW YOEK LIFE INSUE-
ANCE COMPANY. (No. 456.)

KATHEEINE CAEY COOK, Harriet Huntington Cook, and

Ellenor Eichardson Cook, by Anna H. E. Cook, Their
Guardian and Next Friend, Appts., v. BOSTON WHAEF
COMPANY et al. (No. 457.)

[220 U. S. 107, 55 L. ed. 389.]

Statutes – origin of revenue bills – amendment by Senate.

1. The substitution in the Senate of a tax on corporations in lieu of the plan of inheritance taxation contained in a general bill for the collection of revenue as it came from the House of Representatives, where the bill originated, was not forbidden by the provisions of U. S. Const, art. 1, § 7, that all bills for the raising of revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills.

[For other cases, see Statutes, I. a, in Digest Sup. Ct. 1908.]
Internal revenue – Federal corporation tax – excise or direct tax.

2. An excise upon the carrying on or the doing of business in a corporate or quasi corporate capacity is what was imposed by the act of August 5, 1909 (36 Stat, at L. 11, 112-117, chap. 6. U. S. Comp. Stat. Supp. 1909, pp. 659, 844-849), § 38, providing that insurance companies and all corporations, joint stock companies, or associations organ-

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ized for profit, and having a capital stock represented by shares, shall be subject annually to a special excise tax with respect to the carrying on or doing business, equivalent to 1 per centum upon the entire net income over and above \$5,000 received from all sources during the year, with certain allowances and deductions.

[For other cases, see Internal Revenue, I. a, in Digest Sup. Ct. 1908.]
Internal revenue – validity of Federal corporation tax – apportionment.

3. The tax measured by net annual income, imposed by the act of August 5, 1909, § 38, upon the carrying on or doing of business in a corporate or quasi corporate capacity, being an excise, and not a direct tax, is not invalid because not apportioned among the several states according to population.

[For other cases, see Internal Revenue, 18-36, in Digest Sup. Ct. 1908.]
Internal revenue – Federal taxation of state agencies – excise on corporation.

4. The excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi corporate capacity, is not invalid because the business taxed is done in pursuance of the authority granted by a state, in the creation of private corporations.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

Internal revenue – excise on corporation – uniformity.

5. Taxing a business when carried on by a corporation, and exempting a similar business when carried on by a partnership or by a private individual, as is done by the act of August 5, 1909, § 38, imposing an excise upon the carrying on or the doing of business in a, corporate or quasi corporate capacity, does not invalidate the tax, since the only limitation upon the power of Congress is uniformity in laying the tax, and this is a geographical uniformity, which does not require the equal application of the tax to all persons or corporations who may come within its operation.

[For other cases, see Internal Revenue, 13-15, 37-42, in Digest Sup. Ct. 1908.]

Constitutional law – discrimination – taxation of corporations.

6. There is such a substantial difference between the carrying on of business by corporations and the same business when conducted by a private firm or individual as would justify – even were the principles of the 14th Amendment to the Federal Constitution applicable – the excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi corporate capacity. [For other cases, see Constitutional Law, 299-312, in Digest Sup. Ct.

1908.]

Internal revenue – excise on corporations – measure of tax.

7. Measuring the excise imposed by the act of August 5, 1909, § 38, upon the carrying on or the doing of business in a corporate or quasi

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corporate capacity by the entire net income from all sources does not invalidate the tax, although a part of such income may be derived from property in itself not taxable.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]
Internal revenue – excise on corporations – measure of tax.

8. The measurement by the net corporate income from all source* of the excise imposed by the act of August 5, 1909, § 38, upon the doing or carrying on of business in a corporate or quasi corporate capacity, is not so arbitrary and baseless as to fall outside of the authority of the taxing power.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]
Constitutional law – due process of law – Federal excise on corporations.

9. Property is not taken without due process of law by the imposition, under the act of August 5, 1909, § 38, of an excise, measured by the net corporate income, upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Constitutional Law, 523-553, in Digest Sup. Ct.]

1908.]

Internal revenue – excise on corporations – possible results as affecting validity.

.10. The possibility that the rights of the several states to create corporations may practically be destroyed by the exercise of the power assumed by Congress in the act of August 5, 1909, § 38, to impose an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity, furnishes no ground for judicial interference with the tax.

[For other cases, see Internal Revenue, I. b, in Digest Sup. Ct. 1908.]

Internal revenue – excise on corporations – doing business – real estate companies.

11. Corporations organized for and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the meaning of the act of August 5, 1909, § 38, imposing an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue – excise on corporations – doing business – taximeter company.

12. A corporation owning and leasing taxicabs and collecting rents therefrom is engaged in business within the meaning of the act of August 5, 1909, § 38, imposing an excise upon the doing or carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

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Internal revenue – Federal taxation of state agencies – excise on public-service corporations,

13. Public-service corporations, such as street railway companies created under state laws, may constitutionally be subjected to the excise imposed by the act of August 5, 1909, § 38, upon the doing or carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

Internal revenue – excise on corporations – exemptions.

14. Exempting corporations whose net annual incomes are under \$5,-000 from the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, does not invalidate the tax.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]
Internal revenue – excise on corporations – exemptions.

15. Labor, agricultural, and horticultural organizations, fraternal and benevolent societies, and organizations for religious, charitable or educational purposes, could be excepted from the operation of the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, without invalidating the tax.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]
Internal revenue – excise on corporations – validity of deductions,

16. The excise measured by net annual income, imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity, is not invalid because a deduction of interest payments is permitted only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on bonded or other indebtedness to an amount not exceeding the paid-up capital stock.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

Internal revenue – excise on corporations – inequality of application.

17. Inequality of application, owing to different local conditions, does not invalidate the excise imposed by the act of August 5, 1909, § 38, upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, 37-42, in Digest Sup. Ct. 1908.]

Internal revenue – Federal tax on state agencies – excise on corporations.

18. Corporations acting as trustees, guardians, etc., under the authority of the laws or courts of a state, are not the agents of the state government in such a sense as to be exempt from the imposition, under the act of August 5, 1909, § 38, of an excise measured by net income upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III.; States, IV. e, in Digest Sup. Ct. 1908.]

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Searches and seizures – excise on corporation – making tax returns

public.

19. Making the returns for the assessment of the excise imposed by the act of August 5, 1909, § 38, on the doing or the carrying on of business in a corporate or quasi corporate capacity, public documents and open to inspection as such, under certain restrictions, as is done by subsec. 6 of that act, as amended by the act of June 17, 1910 (36 Stat, at L. 494, chap. 297), does not do violence to the constitutional protection against unreasonable searches and seizures.

[For other cases, see Searches and Seizures, in Digest Sup. Ct. 1908.] Statutes – when validity may be assailed.

20. No objections to the validity of a statute will be considered which do not properly arise in the case before the court.

[For other cases, see Statutes, I. d, 3, in Digest Sup. Ct. 1008.] [Nos. 407, 409, 410, 411, 412, 415, 420, 425, 431, 432, 442, 443, 446, 456 and

457.]

Argued March 17 and 18, 1910. Ordered for reargument before full bench May 31, 1910. Reargued. January 17, 18 and 19, 1911. Decided March 13, 1911.

Appeal from the Circuit Court of the United States for the District of Vermont to review a decree sustaining a demurrei to and dismissing a bill which sought to restrain the directors of a corporation from complying with the Federal corporation tax. Affirmed. Also

Seven appeals from the Circuit Court of the United States for the Southern District of New York ; three appeals from the Circuit Court of the United States for the District of Massachusetts; two appeals from the Circuit Court of the United States for the Northern District of Illinois; an appeal from the Circuit Court of the United States for the Northern District of Ohio; and an appeal from the Circuit Court of the United States for the District of Minnesota, – all bringing up similar decrees for review. Affirmed.

The facts are stated in the opinion.

Mr. Maxwell Evarts argued the cause, and, with Mr. John Q. Sargent, Attorney General of Vermont, and Mr. Henry S. Wardner, filed a brief for appellant in No. 407 :

A state cannot tax an instrumentality of the Federal government

M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579; Osborn V. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Weston

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V. Charleston, 2 Pet. 449, 1 L. ed. 481 ; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022 ; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451.

For the same reason, and because a state is as independent a sovereignty within its sphere as the national government, Congress cannot pass any law taxing an instrumentality of a state.

Day v. Buffinton, 3 Cliff. 376, Fed. Cas. No. 3,675, s. c. 11 Wall. 113, 20 L. ed. 122 ; United States v. Baltimore & O. E. Co. 17 Wall. 322, 21 L. ed. 597 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673.

The Federal courts have assumed, and the highest state courts have decided, that a state cannot tax patents granted by the general government (M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; Patterson v. Kentucky, 97 U. S. 501, 24 L. ed. 1115 ; Webber v. Virginia, 103 U. S. 344, 26 L. ed. 565 ; Allen v. Eiley, 203 U. S. 347, 51 L. ed. 216, 27 Sup. Ct. Rep. 95, 8 A. & E. Ann. Cas. 137 ; Re Sheffield, 64 Fed. 833 ; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111 ; People ex rel. Edison Electric Illuminating Co. v. Board of Assessors, 156 N. Y. 417, 42 L.R.A. 290, 51 N. E. 269). A patent is a franchise (Bloomer v. McQuewan, 14 How. 539, 14 L. ed. 532) that can be granted concurrently by both the state and the United States (Livingston v. Van Ingen, 9 Johns. 507 ; 1 Robinson, Patents § 45), and is clearly not an instrumentality of either state or Federal government.

This court has held that a state cannot tax the franchise granted to a Federal corporation, and the decision is placed not upon the ground that the corporation is an instrumentality of the government, but because the franchise emanates from, and is a portion of, the power of the government that confers it. To tax it is not only derogatory to the dignity, but subversive of the powers, of the government, and repugnant to its paramount sovereignty.

California v. Central P. R. Co. 127 U. S. 1, 41, 32 L. ed. 150, 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073.

Inasmuch as the principle of the decision that a state cannot tax a Federal instrumentality was held to apply when the question was reversed, and Congress undertook to tax a state instrumentality, it would seem to follow that the reasons and principles for the decision that a state cannot tax a Federal

corporate franchise would also apply to an attempt by the general government to tax a corporate franchise granted by a state.

If we run through the cases decided by this court, we find expressions — ^not decisions, it is true, but expressions— indicating that, in American jurisprudence, the power to tax a corporate franchise rests only with the state which creates it.

West River Bridge Co. v. Dix, 6 How. 548, 12 L. ed. 552 ; State Tax on E. Gross Eeceipts, 15 Wall. 296, 21 L. ed. 169 ; Baltimore & O. E. Co. v. Maryland, 21 Wall. 473, 22 L. ed. 684 ; Ee Greene, 52 Fed. 112 ; Hale v. Henkel, 201 U. S. 43, 86, 50 L. ed. 652, 670, 26 Sup. Ct. Eep. 370.

The law puts the burden on the power of the state to create corporations. The mere phraseology used in the statute — "special excise tax with respect to the carrying on or doing business" — counts for little as against the substance and effect when the constitutionality of the law is attacked.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 580, 581, 39 L. ed. 759, 818, 819, 15 Sup. Ct. Eep. 673 ; Knowlton v. Moore, 178 U. S. 41, 81, 44 L. ed. 969, 985, 20 Sup. Ct. Eep. 747; Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 411, 48 L. ed. 496, 501, 24 Sup. Ct. Eep. 376 ; Craig v. Missouri,, 4 Pet. 410, 433, 7 L. ed. 903, 911.

Classifying corporations by Congress for the imposition of Federal taxes and other special burdens takes their property without due process of law and without just compensation.

Holden v. Hardy, 169 U. S. 366, 389, 42 L. ed. 780, 790, 18 Sup. Ct. Eep. 383; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Eep. 579 ; Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561 ; Twining v. l^ew Jersey, 211 U. S. 78, 101, 102, 53 L. ed. 97, 107, 29 Sup. Ct. Eep. 14; Den ex dem. Murray v. Hoboken Land & Improv. Co. 18 How. 272, 276, 15 L. ed. 372, 374; Sinking Fund Cases, 99 U. S. 700, 718, 25 L. ed. 496, 501 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 599, 39 L. ed. 759, 825, 15 Sup. Ct. Eep. 673 ; Ballard v. Hunter, 204 U. S. 241, 51 L. ed. 461, 27 Sup. Ct. Eep. 261 ; Magoun v. Illinois Trust & Sav. Bank, 170 TJ. S. 283, 301, 42 L. ed. 1037, 1045, 18 Sup. Ct. Eep. 594.

The denial of the equal protection of the laws and the taking of property without due process of law are, so far as this case is concerned, the same thing, because the injury complained

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of lies in the enforcement of a statute which is unequal and arbitrary.

Duncan v. Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Eep. 570; Gulf, C. & S. F. K. Co. v. Ellis, 165 U. S. 150,

41 L. ed. 666, 17 Sup. Ct. Eep. 255 ; Chicago, B. & Q. E. Co. V. Chicago, 166 XJ. S. 226, 241, 41 L. ed. 979, 986, 17 Sup. Ct. Eep. 581; Cotting v. Kansas City Stock Yards Co. (Cotting V. Godard) 183 U. S. 79, 46 L. ed. 92, 22 Sup. Ct. Eep. 30 ; Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. Eep. 431.

Even in tax statutes the Federal Constitution cannot be utterly disregarded.

Bell's Gap. E. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Eep. 533; American Sugar Eef. Co. v. Louisiana, 179 U. S. 89, 92, 45 L. ed. 102, 103, 21 Sup. Ct. Eep. 43 ; Billings V. Illinois, 188 TJ. S. 97, 101, 47 L. ed. 400, 402, 23 Sup. Ct. Eep. 272 ; Southern E. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Eep. 287, 17 A. & E. Ann. Cas. 1247.

The corporation tax is a direct tax on the franchise, and therefore unconstitutional, because not apportioned.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673 ; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Eep. 912 ; Mcol V. Ames, 173 U. S. 509, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Eep. 522 ; California v. Central P. E. Co. 127 U. S. 1, 41, 42, 32 L. ed. 150, 157, 158, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073; Beale, Foreign Corp. § 508, p. 665; Lumberville Delaware Bridge Co. v. State Assessors, 55 E". J. L. 537, 25 L.E.A. 134, 26 Atl. 711.

The joint stock companies stand on the same basis as the corporations as far as the corporation tax is concerned.

Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life Ins. Co. v. Oliver) 10 "Wall. 566, 19 L. ed. 1029 ; Atty. Gen. v. Mercantile M. Ins. Co. 121 Mass. 524; People ex rel. Piatt v. Wemple, 117 N. Y. 136, 6 L.E.A. 303, 2 Inters. Com. Eep. 735, 22 N. E. 1046.

Mr. Richard V. Lindabury argued the cause, and, with

Messrs. Charles W. Pierson and Rohert Lynn Cox, filed a brief

for appellants in ITos. 409 and 410 :
Foster Income Tax. - 73.

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The tax is not an excise tax upon business or occupation, but is either (a) a corporate franchise tax, or (b) an income tax.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376 ; Maine v. Grand Trunk R. Co. 142 U. S. 217, 227, 35 L. ed. 994, 995, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163 ; Wicol v. Ames, 173 U. S. 509,

43 L. ed. 786, 19 Sup. Ct. Rep. 522; Fairbank v. United States, 181 U. S. 283, 293, 45 L. ed. 862, 866, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305; Fatten v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747 ; State Tax on Foreign-held Bonds, 15 Wall. 300, 319, 21 L. ed. 179, 186 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 580-583, 39 L. ed. 818-820, 15 Sup. Ct. Rep. 673; Galveston, H. & S. A. R. Co. V. Texas, 210 U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.

If the tax be construed as a franchise tax, it constitutes, so far as state corporations are concerned, an interference with sovereign powers and functions of the states not surrendered to the general government, and expressly reserved to the states by the 10th Amendment.

Home Ins. Co. v. New York, 134 U. S. 594, 600, 601, 33 L. ed. 1025, 1029, 1030, 10 Sup. Ct. Rep. 593 ; Society for Savings V. Coite, 6 Wall. 594, 18 L. ed. 897 ; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907 ; Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163 ; Horn Silver Min. Co. v. New York, 143 U. S. 305, 313, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403 ; People ex rel. United States Aluminium Printing Plate Co. v. Knight, 174 "N. Y. 475, 63 L.R.A. 87, 67]Sr. E. 65 ; Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 317, 9 L. ed. 709, 732 ; Union P. R. Co. v. Peniston, 18 Wall. 5, 30, 21 L. ed. 787, 791; Mercantile Nat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826 ; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597 ; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699 ; Cooley, Const. Lim. 7th ed. p. 684; Fifield v. Close, 15 Mich.

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509 ; California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073 ; Chisholm v. Georgia, 2 Dall. 419, 1 L. ed. 440; Weston v. Charleston, 2 Pet. 449, 467, 7 L. ed. 481, 487; Mercantile IStat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Rep. 826 ; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022 ; Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151, 29 L. ed. 845, 6 Sup. Ct. Rep. 670 ; People ex rel. Edison Electric Illuminating Co. v. Board of Assessors, 156 N. Y. 417, 42 L.R.A. 290, 51 IST. E. 269 ; People ex rel. A. J. Johnson Co. V. Roberts, 159 F. Y. 70, 45 L.R.A. 126, 53 K E. 685 ; Re Sheffield, 64 Fed. 833 ; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111; Webber v. Virginia, 103 U. S. 344, 26 L. ed. 565 ; Wisconsin C. R. Co. v. Price County, 133 U. S. 496, 504, 33 L. ed. 687, 690, 10 Sup. Ct. Rep. 341.

The fact that a tax is on property does not render it constitutional if it nevertheless involves an interference with sovereign powers or instrumentalities of a state.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122 ; United States v. Baltimore & O. R. Co. 17 Wall. 322, 21 L. ed. 597.

If the tax is on franchises as property, it is a tax imposed on real or personal property, and is void under art. 1, §§ 2 and 9 of the Constitution, as being a direct tax not apportioned according to population.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, rehearing 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912.

The tax ordained by the act in question is nonuniform, arbitrary, and unequal; and, if imposed and enforced, would deprive the corporations and joint stock associations against which it is levied of their property without due process of law, contrary to the provisions of the 5th Amendment of the Constitution.

Cooley, Tax. p. 259 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 598, 39 L. ed. 825, 15 Sup. Ct. Rep. 673 ; People ex rel. Farrington v. Mensehing, 187 J^r. Y. 8, 10 L.R.A. (KS.) 025, 79 N. E. 884, 10 A. & E. Ann Cas. 101 ; 1 Hamilton's Works, 1885, ed. 270; Dill. Mun. Corp. §§ 736, 737; Desty, Tax. § 10;

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People ex rel. Detroit & H. R. Co. v. Salem, 20 Mich. 452, 4-Am. Eep. 400; State ex rel. White House School Dist. No. 7 V. Eadington Twp. 36 N. J. L. 70 ; State, Agens, Prosecutor, V. Newark, 37 IST. J. L. 421, 18 Am. Rep. 729 ; Durach's Appeal, 62 Pa. 494; Santa Clara R. Tax Case, 9 Sawy. 170, 18 Fed. 388; Citizens' Sav. & L. Asso. v. Topeka, 29 Wall. 655, 663, 22 L. ed. 455, 461 ; Hurtado v. California, 110 U. S. 517, 534, 28 L. ed. 232, 238, 4 Sup. Ct. Rep. 111, 292; Barbier v. Connolly, 113 T.J. S. 27, 31, 28 L. ed. 923, 924, 5 Sup. Ct. Rep. 357; Re Kemmler, 136 U. S. 436, 448, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930 ; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed 225, 227, 11 Sup. Ct. Rep. 579 ; Giozza v. Tiernan, 148 U. S. 657, 662, 37 L. ed. 599, 601, 13 Sup. Ct. Rep. 721 ; Duncan v. Missouri, 152 U. S. 377, 38 L. ed. 485, 14 Sup. Ct. Rep. 570; Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 151, 154, 159, 41 L. ed. 667-669, 17 Sup. Ct. Rep. 255.

Mr. Edward Osgood Brown argued the cause, and, with Messrs. Orville Peckham, George Pochard, and Vincent J. Walsh, filed a brief for appellants in ISTos. 411 and 412:

Despite the attempt of its framers by mere phraseology to negative the idea that the tax is an income tax, it remains so because of its essential character and substance.

Stockard v. Morgan, 185 U. S. 27, 46 L. ed. 785, 22 Sup. Ct. Rep. 576; Asbell v. Kansas, 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 A. & E. Ann. Cas. 1101; Galveston, H. & S. A. R. Co. V. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638.

While a tax in certain cases may be laid on an intangible right or privilege in proportion to the value of some other property without being a tax on that property (as held in Michigan O. R. Co. V. Collector [Michigan C. R. Co. v. Slack] 100 U. S. 595, 25 L. ed. 647; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Plummer v. Color, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829 ; Delaware Railroad Tax, 18 Wall. 206, 21 L. ed. 888; New York V. Roberts, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Rep. 58), this is only true (1) where the value of the property by which the tax is gauged is a reasonable measure of the value of the intangible right or privilege, or (2) where the intangible

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Tight might be altogether taken away by the taxing government, and may therefore be conceded only on such conditions as that government pleases.

The selection of the persons to be taxed for the privilege of existence or of doing business is so "arbitrary and confiscatory" that it transcends the limitations arising from those fundamental conceptions of free government -which underlie all constitutional systems. Therefore this court should interfere.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747.

The corporations created by the states are to the United States in the same relation as natural persons who are citizens of those states, and cannot be arbitrarily selected for taxation on the privilege of existing or doing business.

Louisville, C. & C. E. Co. v. Letson, 2 How. 497, 11 L. ed

353 ; Marshall v. Baltimore & O. K. Co. 16 How. 314, 14 L. ed 953; Ohio & M. E. Co. v. Wheeler, 1 Black, 286, 17 L. ed 130; Bank of Augusta v. Earle, 13 Pet. 519, 10 L. ed. 274: St. Louis v. Wiggins Ferry Co. 11 Wall. 423, 20 L. ed. 192 : San Bernardino County v.- Southern P. E. Co. 118 U. S. 417, 30 L. ed. 125, 6 Sup. Ct. Eep. 1144; Pembina Consol. Silver Min. & Mill. Co. v. Pennsylvania, 125 U. S. 181, 31 L. ed.

650, 2 Inters. Com. Eep. 24, 8 Sup. Ct. Eep. 737; Charlotte, C. & A. E. Co. v. Gibbes, 142 U. S. 386, 35 L. ed. 1051, 12 Sup. Ct. Eep. 255.

As the right or privilege of existing as a corporation or as a joint stock company or as an insurance company, and the right or privilege of doing business as any one of them, are very different things in one state from what they ■ are in another, because of the differing laws of the states (for example, freedom of a corporation stockliolder from individual liability exists in 'New Jersey, but not in California), and as this court takes judicial notice on this appeal of the laws of all the states (Hanley V. Donoghue, 116 U. S. 1, 29 L. ed. 535, 6 Sup. Ct. Eep. 242 ; Fourth IStat. Bank v. Francklyn, 120 U. S. 747, 30 L.. ed. 825, 7 Sup. Ct. Eep. 757 ; Case v. Kelly, 133 U. S. 21, 33. L. ed. 513, 10 Sup. Ct. Eep. 216; Mills v. Green, 159 U. S..

651, 40 L. ed. 293, 16 Sup. Ct. Eep. 132), the corporation tax is, within the judicial knowledge of the court, unequal and wanting in uniformity between the states.

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The corporation tax is unconstitutional, whether direct or indirect, and whether uniform or not, because it is an attempted interference with the instrumentalities of the states.

M'CuUoch V. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; The Collector V. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122 ; United States v. Baltimore & O. E. Co. 17 Wall. 322, 21 L. ed. 597 ; Union P. E. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787; California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Eep. 1, 12 Am. Crim. Eep. 699.

Power to grant acts of incorporation is practically unlimited in the states, and incident to the sovereignty.

Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 9 L. ed. 709.

Congress has not the power to tax and thus destroy the right of existence of a corporation. Such a power would be tantamount to a power to tax the right to create such an existence.

California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct.- Eep. 1073 ; The Collector V. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151-178, 29 L. ed. 845-854, 6 Sup. Ct. Eep. 670.

Whatever may be said of other corporations, public-service corporations in private hands, furnishing transportation, water, light, or performing other public or semipublic functions, are instrumentalities of the state in the strictest sense, and for that reason are given the power of eminent domain; the functions of many of them are indeed governmental ; e. g., the functions of water companies.

Eogers Park Water Co. v. Fergus, 180 U. S. 624, 45 L. ed. 702, 21 Sup. Ct. Eep. 490 ; Freeport Water Co. v. Freeport, 180 U. S. 587, 45 L. ed. 679, 21 Sup. Ct. Eep. 493; Danville Water Co. v. Danville City, 180 U. S. 619, 45 L. ed. 696, 21 Sup. Ct. Eep. 505.

The income of municipal bonds to a very large amount is included in the income on which the Northern Trust Company threatens to pay 1 per centum as a tax; such income from instrumentalities of state governments has been explicitly declared by this court untaxable by Congress, directly or indirectly, for

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any purpose whatever (Pollock v. Earmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Kep. 673 at seq.), and this threatened action should be enjoined independently of all other considerations.

Mr. Julien T. Davis argued the cause, and, with Mr. Frederic D. McKenney, filed a brief for appellant in No. 415 :

The fact that the tax is denominated a "special excise tax with respect to the carrying on or doing business" is not controlling.

Henderson v. ITew York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543 ; Collins v. ISTew Hampshire, 171 U. S. 30, 43 L. ed. 60, 18 Sup. Ct. Rep. 768 ; Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678 ; Pollock v. Farmers' Loan & T. Co. 157 TJ. S. 581, 39 L. ed. 819, 15 Sup. Ct. Eep. 673.

The natural and reasonable effect of the corporation tax law is to tax net income.

Henderson v. New York (Henderson v. Wickham) 92 U. S.

259, 23 L. ed. 543; *Collins v. New Hampshire*, 171 U. S. 30, 43 L. ed. 60, 18 Sup. Ct. Eep. 768; *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678; *Pollock v. Farmers' Loan & T. Co.* 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673.

The Federal government and the government of the states are, within their respective spheres of action, mutually independent, and, because of such independence, the taxing power of each is limited, in that neither may tax the agencies of the other.

The Collector v. Day (*Buffington v. Day*) 11 Wall. 113, 20 L. ed. 122; *M'Culloch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579 ; *Osborn v. Bank of United States*, 9 Wheat. 738, 6 L. ed. 204 ; *Weston v. Charleston*, 2 Pet. 449, 7 L. ed. 481 ; *Dobbins v. Erie County*, 16 Pet. 435, 10 L. ed. 1022 ; *New York ex rel. Bank of Commerce v. Tax Comrs.* 2 Black, 620, 17 L. ed. 451; *The Banks v. New York* (*New York ex rel. Bank of N. Y. Nat. Bkg. Asso. v. Connelly*) 7 Wall. 17, 19 L. ed. 57; *Bank of New York v. New York County*, 7 Wall. 26, 19 L. ed. 60 ; *Texas v. White*, 7 Wall. 725, 19 L. ed. 237 ; *Cooley, Const. Lim.* 7th ed. p. 683 ; *United States v. Baltimore & O. E. Co.* 17 Wall. 322, 21 L. ed. 597; *Pollock v. Farmers' Loan & T. Co.* 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673; Am-

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brocini v. United States, 187 T.J. S. 1, 47 L. ed. 49, 23 Sup. Ct. Kep. 1, 12 Am. Criin. Eep. 699 ; *Jones v. Keep*, 19 Wis. 390; *Swift y. Comes*, 20 Wis. 398; *Sayles v. Davis*, 22 Wis. 227 ; *rifield v. Close*, 15 Mich. 505 ; *State ex rel. Lakey v. Gar-ton*, 32 Ind. 1, 2 Am. Eep. 315.

The franchise to be a corporation is a means employed by the state government in the exercise of its powers and functions.

M'CuUoch V. Maryland, 4 Wheat. 410, 4 L. ed. 602 ; *Angell & A. Priv. Corp.* 10th ed. p. 23 ; *Hale v. Henkel*, 201 U. S. 43, 50 L. ed. 652, 26 Sup. Ct. Eep. 370; *California v. Southern P. E. Co.* 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073.

The corporation tax law, if the tax falls upon "carrying on or doing business," must fail for want of equality and uniformity in the tax thereby imposed.

State, Agens, Prosecutor, v. Newark, 37 'N. J. L. 415, 18 Am. Eep. 729; *Ee Washington Ave.* 69 Pa. 352, 8 Am. Eep. 255; *Kentucky E. Tax Cases*, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Eep. 57 ; *Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Eep. 594; *Cook v. Marshall County*, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Eep. 233; *Michigan C. E. Co. v. Powers*, 201 U. S. 245, 50 L. ed. 744, 26 Sup. Ct. Eep. 459 ; *Adams v. Kuykendall*, 83 Miss. 571, 35 So. 830; *State v. Ide*, 35 Wash. 576, 67 L.E.A. 280, 102

Am. St. Eep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

The corporation tax law is unequal in its operation, in that it taxes corporations, joint stock companies and associations, and exempts individuals and co-partnerships carrying on the same business and deriving net income from the same sources as in the case of such bodies.

Knowlton v. Moore, 178 U. S. 109, 44 L. ed. 996, 20 Sup. Ct. Eep. 747; State v. Ide, 35 Wash. 576, 67 L.E.A. 280, 102 Am. St. Eep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

Requiring a corporation to make a return under penalty for failure to do so constitutes a search within the meaning of the 4th Amendment.

Boyd v. United States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Eep. 524; Hale v. Henkel, 201 U. S. 43, 50 L. ed. 652, 26 Sup. Ct. Eep. 370; Clinton v. Phillips, 58 U. S. 102, 11 Am. Eep. 52.

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To engage in interstate commerce is a constitutional right, and not a privilege ; therefore Congress cannot prohibit the exercise of such right.

Crutcher v. Kentucky, 141 U. S. 47, 35 L. ed. 649, 11 Sup. Ct. Eep. 851 ; Eeid v. Colorado, 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Eep. 92, 12 Am. Crim. Eep. 506 ; Employers' Liability Cases (Howard v. Illinois C. E. Co.) 207 U. S. 463, 52 L. ed. 297, 28 Sup. Ct. Eep. 141 ; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Eep. 190; Paul v. Virginia, 8 Wall. 168, 19 L. ed. 357; Pullman Co. v. Kansas, 216 U. S. 56, 54 L. ed. 378, 30 Sup. Ct. Eep. 232.

The power to regulate does not include the power to prohibit.

Miller v. Jones, 80 Ala. 89; Bronson v. Oberlin, 41 Ohio St. 476, 52 Am. Eep. 90 ; Ex parte Patterson, 42 Tex. Crim. Eep. 256, 51 L.E.A. 654, 58 S. W. 1011 ; Duckwall v. New Albany, 25 Ind. 283 ; McConvill v. Jersey City, 39 N. J. L. 38 ; People v. Gadway, 61 Mich. 285, 1 Am. St. Eep. 578, 28 K W. 101; Mernaugh v. Orlando, 41 Fla. 433, 27 So. 34; Ee Hauck, 70 Mich. 396, 38 IST. W. 275 ; State v. DeBar, 58 Mo. 395; Sweet v. Wabash, 41 Ind. 7; Andrews v. State, 3 Heisk. 165, 8 Am. Eep. 8 ; Ex parte Byrd, 84 Ala. 17, 5 Am. St. Eep. 328, 4 So. 397; State, Mihlenbrinck, Prosecutor, v. Long Branch, 42 li. J. L. 364.

If Congress cannot tax the business of interstate commerce or interstate commerce itself, it is hard to conceive how it can tax the privilege of doing such business.

Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Eep. 190.

Mr. /. B. Foraker argued the cause and filed a brief for appellant in No. 420 :

The measure of the tax must have some natural, legal, appropriate relation to the thing taxed ; otherwise there may result inequality and injustice. This, of itself, is sufficient reason for refusing so to construe this law as to lay the tax on the corporation, or its franchise, or its facility, the result of which would, of necessity, be the grossest inequality.

Knowlton v. Moore, 178 U. S. 76, 44 L. ed. 983. 20 Sup. Ct. Eep. 747.

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If the law be construed to lay the tax on the corporation, its franchise, or its facility to transact business, we cannot possibly have uniformity of operation.

Gulf, C. & S. F. K. Co. V. Ellis, 165 U. S. 159, 41 L. ed. 669, 17 Sup. Ct. Rep. 255.

If the law be construed to lay the tax on the franchise to be a corporation, then at once arises the question whether it is not unconstitutional because of an infringement upon the sovereign right of the state to grant franchises to be corporations.

California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073 ; Veazie Bank V. Fenno, 8 Wall. 547, 19 L. ed. 487.

Corporations and their franchises, created by the states, to act as agencies or instrumentalities of state governments, cannot be made the subject of Federal taxation, either directly or indirectly.

The Binghamton Bridge (Chenango Bridge Co. v. Binghamton Bridge Co.) 3 Wall. 51, 18 L. ed. 137; New Orleans Gaslight Co. V. Louisiana Light & H. P. & Mfg. Co. 115 U. S. 663, 29 L. ed. 521, 6 Sup. Ct. Rep. 252.

To say that a business shall be taxed, as an occupation, when found in the hands of a corporation, and that it shall go exempt from taxation when found next door, in the hands of a co-partnership or an individual, is purely arbitrary and manifestly unreasonable and unjust.

American Sugar Ref. Co. v. Louisiana, 179 U. S. 92, 45 L. ed. 103, 21 Sup. Ct. Rep. 43 ; Billings v. Illinois, 188 U. S. 102, 47 L. ed. 403, 23 Sup. Ct. Rep. 272 ; Gulf, C. & S. F. R. Co. V. Ellis, 165 U. S. 155, 41 L. ed. 668, 17 Sup. Ct. Rep. 255.

Mere words and names will not be allowed to change the legal effect of a plain statutory provision, or alter the familiar rules of construction.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 580, 39 L. ed. 818, 15 Sup. Ct. Rep. 673 ; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638.
• The search and seizure provided for in this corporation tax measure are unreasonable.

Boyd V. United States, 116 U. S. 616, 29 L. ed. 746, 6 Sup. Ct. Rep. 524; Entick v. Carrington, 19 How. St. Tr. 1029; Hale V. Henkel, 201 U. S. 43, 44, 50 L. ed. 652, 653, 26 Sup.

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Ct. Rep. 370 ; Re Pacific R. Coimmission, 32 Fed. 250 ; Re Com-
ingore, 96 Fed. 557, affirmed in 177 U. S. 470, 44 L. ed. 850,
20 Sup. Ct. Rep. 701.

Messrs. Alton O. Dustin, George B. Siddall, Arthur F. Odlin,
and Richard Inglis also filed a brief for appellant in No. 420 :

The name whereby a tax is called is not controlling.

Mchol V. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct.
Rep. 522 ; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969,
20 Sup. Ct. Rep. 747; Snyder v. Bettman, 190 U. S. 249,
47 L. ed. 1035, 23 Sup. Ct. Rep. 803 ; Brown v. Maryland, 12
Wheat. 419, 6 L. ed. 678; Home Sav. Bank v. Des Moines,
205 U. S. 503, 51 L. ed. 901, 27 Sup. Ct. Rep. 571 ; Delaware,
L. & W. R. Co. V. Pennsylvania, 198 U. S. 341, 49 L. ed. 1077,
25 Sup. Ct. Rep. 669 ; Fairbank v. United States, 181 U. S.
283, 45 L. ed. 862, 21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep.
135; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39
L. ed. 759, 15 Sup. Ct. Rep. 673; Powers v. Detroit, G. H. &
M. R. Co. 201 U. S. 543, 50 L. ed. 860, 26 Sup. Ct. Rep. 556 ;
Robbing v. Taxing Dist. 120 U. S. 489, 30 L. ed. 694, 1 Inters.
Com. Rep. 45, 7 Sup. Ct. Rep. 592 ; Philadelphia & S. Mail
S. S. Co. V. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1
Inters. Com. Rep. 308, 30 Sup. Ct. Rep. 1118 ; Leloup v. Mo-
bile, 127 U. S. 640, 32 L. ed. 311, 2 Inters. Com. Rep. 134,
8 Sup. Ct. Rep. 1380; Cook v. Pennsylvania, 97 U. S. 566,
24 L. ed. 1015 ; Almy v. California, 24 How. 169, 16 L. ed.
€44; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022;
Weston V. Charleston, 2 Pet. 449, 7 L. ed. 481 ; Brown v. Mary-
land, 12 Wheat. 419, 6 L. ed. 678.

The tax is an income tax.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912 ; Mcol v. Ames, 173 U. S. 509, 519, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Rep. 522 ; Knowlton v. Moore, 175 U. S. 41, 52, 53, 79-83, 44 L. ed. 969, 974, 975, 984-986, 20 Sup. Ct. Rep. 747 ; Fairbank V. United States, 181 U. S. 283, 296, 45 L. ed. 862, 868.

21 Sup. Ct. Rep. 648, 15 Am. Crim. Rep. 135 ; Patton v. Brady, 184 U. S. 608, 618, 46 L. ed. 713, 718, 22 Sup. Ct. Rep. 493 ; Thomas v. United States, 192 U. S. 363, 370, 48 L. ed. 481,

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483, 24 Sup. Ct. Eep. 305 ; Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Eep. 376 ; Hafemann v. Gross, 199 T.J. S. 342, 350, 50 L. ed. 220, 225, 26 Sup. Ct. Eep. 80.

It is necessary to recognize that the Pollock Case repudiated the principle upon which Hylton v. United States, 3 Dall. 171, 1 L. ed. 556, and also Springer v. United States, 102 U. S. 586, 26 L. ed. 253, were decided.

With these two cases out of the way, the remaining decisions fall naturally into two classes and the constitutional classification becomes fairly clear.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 ; Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99 ; Michigan C. E. Co. v. Collector (Michigan C. E. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; Merchants' Wat. Bank v. United States, 101 U. S. 1, 25 L. ed. 979; ISTicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522 ; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; Treat v. White, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Eep. 611 ; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305; Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Eep. 376 ; Cornell v. Coyne, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Eep. 383 ; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561.

The distinction between all of the above taxes and the present tax is that each of the above taxes was laid with respect to some particular thing. They were specific, while this is general. They were imposed because of the exercise of some particular right or privilege, while this tax is upon income generally, imposed solely by reason of ownership.

Thomas v. United States, 192 U. S. 363, 370, 48 L. ed. 481,

483, 24 Sup. Ct. Eep. 305.

The states cannot interfere with the full and free exercise of the powers delegated to the national government.

M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; Osborn V. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Weston V. Charleston, 2 Pet. 449, 7 L. ed. 481 ; ISTew York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L, ed. 451 ; Bank

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Tax Case (New York ex rel. Bank of Commonwealth v. Tax ■& A. Comrs.) 2 Wall. 200, 17 L. ed. 793; The Banks v. New York (New York ex rel. Bank of N. Y. Nat. Bkg. Asso. v. ■Connelly) 7 Wall. 16, 19 L. ed. 57; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022 ; California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Kep. 153, 8 Sup. Ct. Eep. 1073 ; Union P. E. Co. v. Peniston, 18 Wall. 5, 29-31, 21 L. ed. 787, 791, 792.

The national government cannot interfere with the full and free exercise of the powers reserved to the states.

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 X. ed. 122 ; United States v. Baltimore & O. E. Co. 17 Wall. 322, 21 L. ed. 597; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 584, 39 L. ed. 759, 820, 15 Sup. Ct. Eep. 673 ; Am-brosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Eep. 1, 12 Am. Crim. Eep. 699; Texas v. White, 7 Wall. 700, 725, 19 L. ed. 227, 237; Briscoe v. Bank of the Common- Tvealth, 11 Pet. 317, 9 L. ed. 732.

The powers of the separate states within their own spheres are as complete as are the sovereignty and independence of the .general government within its sphere.

Cooley, Const. Lim. 7th ed. p. 64; United States v. Balti- more & O. E. Co. 17 Wall. 322, 327, 21 L. ed. 597, 599; License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500.

If classification of subjects for taxation is not founded upon reason, but is wholly arbitrary, it takes the property of the citi- zen without due process of law, contrary to the 5th Amendment.

Bell's Gap E. Co. v. Pennsylvania, 134 U. S. 232, 236, 33 L. ed. 892, 894, 10 Sup. Ct. Eep. 533 ; Gulf, C. & S. F. E. Co. V. Ellis, 165 U. S. 151, 160, 41 L. ed. 667, 670, 17 Sup. Ct. Eep. 255; Magoun v. Illinois Trust & Sav. Bank, 170 U. S.

283, 293, 295, 42 L. ed. 1037, 1042, 1043, 18 Sup. Ct. Eep. 594; Nicol v. Ames, 173 U. S. 509, 520, 43 L. ed. 786, 793, 19 Sup. Ct. Eep. 522.

Mr. John G. Johnson argued the cause, and, with Messrs. Frederic Jesup Btimson, Lawrence M. Stochton, and Harris Livermore, filed a brief for appellants in Nos. 425 and 457 :

Both the 5th and 14th Amendments to the Federal Constitution presuppose equality before the law.

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Harding v. People, 160 111. 459, 32 L.R.A. 447, 52 Am. St, Rep. 344, 43 IST. E. 624 ; Carroll v. Greenwich Ins. Co. 199 U. S. 401, 410, 50 L. ed. 246, 26 Sup. Ct. Rep. 66; Mobile & O.. R. Co. V. Tennessee, 153 U. S. 486, 506, 38 L. ed. 793, 800, 14 Sup. Ct. Rep. 968; Cooley, Const. Lira. 6th ed. pp. 479-483, 490.

The states cannot, directly or indirectly, burden the exercise- by Congress of the powers committed to it by the Constitution, nor may Congress burden the agencies or instrumentalities employed by the states in the exercise of their powers.

The Collector v. Day (Buffington v. Day) 11 Wall. 113-124, 20 L. ed. 122-126 ; Fifield v. Close, 15 Mich. 505 ; Cooley, Const. Lim. 6th ed. p. 592.

A state may not tax the corporate franchise of a Federal corporation (M'Culloch v. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; California v. Central P. R. Co. 127 U. S. 41, 32 L. ed. 157, 2 Inters. Com. Rep. 153, 8 Sup. Ct. Rep. 1073), nor may it tax its business if it be a Federal function, such, for instance, as interstate commerce; nor can a state impose a franchise tax even on the stock of corporations incorporated in other states and doing business in the state imposing the tax, if it do not tax its own corporations in the same manner.

Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190.

The creation of a corporation appertains to sovereignty.

M'Culloch V. Maryland, 4 Wheat. 410, 4 L. ed. 602.

Mr. Frederic Jesup Stimson also argued the cause on re-argument, and with Messrs. Jolin G. Johnson, Lawrence M. StocMon, Harris Livermore, and /. Grant Forbes, filed a brief for appellants, in ITos. 425 and 457 :

The states are not subordinate, not "a part" of the Federal government in the sense of being a part of a homogeneity,

but are sovereignties of equal dignity, indestructible, equally important, and in their own demesne equally supreme.

Texas v. White, 7 Wall. 700, 725, 19 L. ed. 227, 237; Lane County v. Oregon, 7 Wall. 71, 76, 19 L. ed. 101, 104; New York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620,

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623, 17 L. ed. 451, 452 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 583, 584, 39 L. ed. 759, 820, 15 Sup. Ct. Rep. 673 ; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122.

The United States have no power under the Constitution to tax either the instrumentalities or the property of a state.

Van Brocklin v. Tennessee (Van Brocklin v. Anderson) 117 U. S. 151, 155, 29 L. ed. 845, 846, 6 Sup. Ct. Rep. 670; Cooley, Const. Law, 3d ed. p. 61.

Is there anything in the reasoning of Mr. Justice Bradley in California v. Central P. K. Co. 127 U. S. 1, 40, 41, 32 L. ed. 150, 157, 158, . 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073, which indicates that it is to be applied to the state government taxing a Federal corporate franchise, and not to the converse proposition ?

A tax on the income or traffic made under the franchise is not different from a tax on the franchise.

Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593.

Unless the Federal government is given wider and other powers of taxation by the Constitution, despite the 5th Amendment, than are given to the commonwealth by the practically unlimited provisions for taxation in the Constitution of Massachusetts, the decisions of the supreme court of Massachusetts are decisive of the point that the "commodity" of having a capital stock represented by assignable shares is not taxable.

Gleason v. McKay, 134 Mass. 419 ; O'Keeffe v. Somerville, 190 Mass. 110, 112 Am. St. Rep. 316, 76 K E. 457, 5 A. & E. Ann. Cas. 684; Minot v. Winthrop, 162 Mass. 113, 26 L.K.A. 259, 38 W. E. 512; Opinions of Justices, 196 Mass. 603, 85 N. E. 545.

Mr. Frederic B. Couderi filed a brief for appellants in N'os. 431 and 432 :

The tax is one upon the franchise or right to be a corporation, granted by the state.

Mercantile Wat. Bank v. New York, 121 U. S. 138, 160, 30 L. ed. 895, 7 Sup. Ct. Rep. 826; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593 ; Society

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for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. V. Massachusetts, 6 Wall. 611, 18 L. ed. 907.

IsTeitlier the state courts nor the legislatures, by giving the tax a particular name, or by the use of some form of words, can take away our duty to consider its nature and effect.

Galveston, H. & S. A. E. Co. v. Texas, 210 U. S. 227, 52 L. ed. 1037, 28 Sup. Ct. Eep. 638.

To characterize the tax as an occupation or business excise is to pervert history. Such taxes are a special class, common in England and the United States.

Dovirell, History of Taxation; Patton v. Brady, 184 IT. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522 ; Chesebrough V. United States, 192 U. S. 253, 48 L. ed. 432, 24 Sup. Ct. Eep. 262; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305.

Where the Federal government has an exclusive right of control or regulation, that right cannot be taxed by a state.

M'Culloch V. Maryland, 4 Wheat. 316, 435, 4 L. ed. 579, 608 ; Weston v. Charleston, 2 Pet. 449, 7 L. ed. 481 ; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; JSTew York ex rel. Bank of Commerce v. Tax Comrs. 2 Black, 620, 17 L. ed. 451; The Banks v. ISTew York (Wevf York ex rel. Bank of ISr. Y. Nat, Bkg. Asso. v. Connelly) 7 Wall. 16, 19 L. ed. 57 ; Moran v. New Orleans, 112 U. S. 69, 28 L. ed. 653, 5 Sup. Ct. Eep. 38; Harman v. Chicago, 147 U. S. 396, 37 L. ed. 216, 13 Sup. Ct. Eep. 306 ; California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073; Dobbins v. Erie County, 16 Pet. 435, 10 L. ed. 1022 ; People ex rel. Edison Electric Light Co. v. Campbell, 138 K Y. 543, 20 L.E.A. 453, 34 IST. E. 370 ; Com. v. Westinghouse Electric & Mfg. Co. 151 Pa. 265, 24 Atl. 1107, 1111.

The cases in v^hich this court has applied the same principle to the protection of the state governments against the Federal government are:

The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122 ; United States v. Baltimore & O. E. Co. 17 Wall. 322, 21 L. ed. 597 ; Mercantile Nat. Bank v. New York, 121 U. S. 138, 162, 30 L. ed. 895, 904, 7 Sup. Ct. Eep. 826 ; Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759,

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15 Sup. Ct. Kep. 673 ; Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Eep. 1, 12 Am. Grim. Eep. 699 ; South Carolina v. United States, 199 U. S. 437, 449, 468, 50 L. ed. 264, 272, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737.

See also, as to other inherent limitations upon Federal legislation:

United States v. Dewitt, 9 Wall. 41, 19 L. ed. 593 ; Keller V. United States, 213 U. S. 138, 53 L. ed. 737, 29 Sup. Ct. Eep. 470, 16 A. & E. Ann. Cas. 1066.

If the precise case here has not before arisen, its exact converse has, and if it be admitted, as it always has been, and still must be, that this principle of immunity is reciprocal, then indeed it must be conceded that this court has adjudicated the very question here involved.

California v. Central P. E. Co. 127 U. S. 1, 32 E. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073.

Even as a tax on franchises it is a tax on property, and hence direct. It is the settled law of this court that a corporate franchise is personal property.

Gulf & S. L E. Co. V. Hewes, 183 U. S. 66, 46 L. ed. 86, 22 Sup. Ct. Eep. 26 ; Postal Teleg. Cable Co. v. Adams, 155 U. S. 696, 39 L. ed. 315, 5 Inters. Com. Eep. 1, 15 Sup. Ct. Eep. 268, 360; Atlantic & P. Teleg. Co. v. Philadelphia, 190 U. S. 160, 47 L. ed. 995, 23 Sup. Ct. Eep. 817.

Mr. Richard Beid Rogers argued the cause and filed a brief for appellants in Wo. 442 :

A grant of a corporate franchise is the exercise of a sovereign faculty.

California v. Central P. E. Co. 127 U. S. 1, 40, 32 L. ed. 150, 157, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073.

And this power was not alienated by the several states to the national government.

Briscoe v. Bank of the Commonwealth, 11 Pet. 257, 9 L. ed. 709.

The states cannot even indirectly tax a corporate franchise

granted by the national government.

M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579; Os-
bom V. Bank of United States, 9 Wheat. 768, 6 L. ed. 211 ;
Brown V. Maryland, 12 Wheat. 419, 6 L. ed. 678 ; Weston v.
Foster Income Tax. - 74.

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Charleston, 2 Pet. 449, 7 L. ed. 481 ; New York ex rel. Bank
of Commerce v. Tax Comrs. 2 Black, 628, 17 L. ed. 454 ; Bank
Tax Case (New York ex rel. Bank of Commonwealth v. Tax
& A. Comrs.) 2 Wall. 200, 17 L. ed. 793 ; Owensboro Nat. Bank
V. Owensboro, 173 U. S. 664, 43 L. ed. 850, 19 Sup. Ct. Eep.
537; First Nat. Bank v. Stone, 174 TJ. S. 438, 43 L. ed. 1038,
19 Sup. Ct. Eep. 876; California v. Central P. E. Co. 127
U. S. 41, 32 L. ed. 157, 2 Inters. Com. Eep. 153, 8 Sup. Ct.
Eep. 1073 ; Van Allen v. Assessors (Churchill v. Utica) 3 Wall.
573, 591, 18 L. ed. 229, 237.

In the respect stated, the state and Federal governments are
upon an equal footing.

The Collector v. Day (BuiHngton v. Day) 11 Wall. 113,
128, 20 L. ed. 122, 127; Union P. E. Co. v. Peniston, 18 Wall.
5, 30, 21 L. ed. 787, 791 ; Van Broeklin v. Tennessee (Van
Brocklin v. Anderson) 117 U. S. 151, 162, 29 L. ed. 845,
849, 6 Sup. Ct. Eep. 670 ; Income Tax Cases (Pollock v. Farm-
ers' Loan & T. Co.) 157 U. S. 584, 39 L. ed. 820, 15 Sup.
Ct. Eep. 673; Knowlton v. Moore, 178 TJ. S. 41, 59, 44 L. ed.
969, 977, 20 Sup. Ct. Eep. 747; Plummer v. Coler, 178 U. S.
115, 117, 44 L. ed. 998, 999, 20 Sup. Ct. Eep. 829; Ambrosini
V. United States, 187 U. S. 1, 7, 47 L. ed. 49, 52, 23 Sup. Ct.
Eep. 1, 12 Am. Grim. Eep. 699 ; South Carolina v. United
States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Eep. 110,
4 A. & E. Ann. Cas. 737.

The act of Congress is unconstitutional in so far as it at-
tempts to impose a tax upon the franchises of foreign cor-
porations, or, at least, upon their right to carry on a purely
intrastate business, - a matter over which the Federal govern-
ment has no control.

License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500;
Covington & C. Bridge Co. v. Kentucky, 154 U. S. 204, 210, 38
L. ed. 962, 965, 4 Inters. Com. Eep. 649, 14 Sup. Ct. Eep.
1087.

The tax is so unequal that, by definition, it is not a tax within
the delegated power of Congress to impose.

Gulf, C. & S. F. E. Co. V. Ellis, 165 U. S. 150, 159, 41 L.
ed. 666, 669, 17 Sup. Ct. Eep. 255 ; Southern E. Go. v. Greene,
216 U. S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Eep. 287,
17 A. & E. Ann. Cas. 1247.

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Messrs. Charles H. Tyler, Owen D. Young, Burton E. Eames, and Randolph Frothingham filed a brief for appellant in No. 443:

The care and management of real estate investments by a corporation do not constitute the carrying on or doing business.

People ex rel. Parker Mills v. Tax Comrs. 23 N. Y. 242; Ee Alabama & C. E. Co. 9 Blatchf. 390, Fed. Cas. No. 124.

The act is invalid as laying a burden upon an instrumentality of the state.

California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073 ; Union P. E. Co. V. Peniston, 18 Wall. 5, 21 L. ed. 787 ; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Fifield V. Close, 15 Mich. 505; Smith v. Short, 40 Ala. 385; Warren V. Paul, 22 Ind. 276 ; Jones v. Keep, 19 Wis. 369 ; Union Bank V. Hill, 3 Coldw. 325 ; Moore v. Quirk, 105 Mass. 49, 7 Am. Eep. 499 ; United States v. Owens, 100 Ped. 70.

The act is invalid because of lack of equality.

Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 46 L. ed. 679, 22 Sup. Ct. Eep. 431.

Messrs. Jed L. Washburn, Willmm D. Bailey, and Oscar Mitchell filed a brief for appellant in No. 446 :

As an excise tax, the same is invalid, not only as not being uniform throughout the United States, whether we say intrinsically or geographically, but because it is so fraught with discriminations, inequalities, and arbitrary exemptions as to be without the taxing power, and is obnoxious to the fundamental principles of our government.

Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Eep. 594; Pacific Ins. Co. v. Souley 7 Wall. 433, 19 L. ed. 95.

The tax that will fall upon the defendant, the Clark Iron Company, and operate to deplete the revenues distributable to its stockholders, falls upon its income by way of rentals and royalties from the use and occupation of its lands, and is there>-

fore, within the decisions of this court, a tax upon the land itself, — a direct tax, unconstitutional and void.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed.

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759, 15 Sup. Ct. Eep. 673 ; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Eep. 912; State v. Evans, 99 Minn. 223, 108 IST. W. 958, 9 A. & E. Ann. Cas. 520; Bainbridge, Mines & Minerals, Am. ed. p. 197; United States V. Gratiot, 14 Pet. 526, 10 L. ed. 573 ; 2 Snyder, Mines, chap. 2, p. 932; Offerman v. Starr, 2 Pa. St. 394, 44 Am. Dee. 211, 10 Mor. Min. Eep. 614; Moore v. Miller, 8 Pa. 273 ; Hyatt V. Vincennes IStat. Bank, 113 U. S. 408, 28 L. ed. 1009, 5 Sup. Ct. Eep. 573; Lehigh Zinc & I. Co. v. Bamford, 150 U. S. 665, 37 L. ed. 1215, 14 Sup. Ct. Eep. 219 ; Tennessee Oil, Gas & Mineral Co. v. Brown, 65 C. C. A. 524, 131 Fed. 696 ; Eaynolds V. Hanna, 55 Fed. 783 ; Co. Litt 53-b ; Clegg v. Eowland, L. E. 2 Eq. 160, 35 L. J. Ch. K S. 396, 14 L. T. IST. S. 217, 14 Week. Eep. 530, 17 Eng. Eul. Cas. 725, 8 Mor. Min. Eep. 520.

As a tax laid only when the income is received by corporations, it is also subject to the charge that it is, in effect, an attempt to levy a tax upon the corporate franchises of such corporations, and, as such, it cannot be sustained.

M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; The Collector V. Day (Buffington v. Day) 11 Wall. 113, 20 L. ed. 122; Weston V. Charleston, 2 Pet. 449, 7 L. ed. 481 ; California v. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073 ; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593 ; Wisconsin C. E. Co. V. Price County, 133 U. S. 496, 33 L. ed. 687, 10 Sup. Ct. Eep. 341 ; Union P. E. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787 ; Osborn v. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; West Eiver Bridge Co. v. Dix, 6 How. 507, 12 L. ed. 535; San Bernardino County v. Southern P. E. Co. 118 U. S. 417, 30 L. ed. 125, 6 Sup. Ct. Eep. 1144; Pollock v. Farmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct Eep. 673.

The law not only denies equal protection, but operates to deprive parties of their property without due process of law, and ignores the provision that excessive fines shall not be imposed.

Cooley, Const. Lim. 6th ed. p. 434 ; Harding v. People, 160 111. 459, 32 L.E.A. 445, 52 Am. St. Eep. 344, 43 K E. 624; Bank of Columbia v. Okely, 4 Wheat. 244, 4 L. ed. 561 ; San Bernardino County v. Southern P. E. Co. 118 U. S. 423, 30 L. ed. 127, 6 Sup. Ct. Eep. 1144; Ex parte Young, 209 U. S.

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123, 52 L. ed. 714, 13 L.E.A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 A. & E. Ann. Cas. 764.

Mr. Charles Howard Williams argued the cause and filed a brief for appellants in 'No. 456 :

The tax imposed is an income tax, pure and simple ; for, although the name is changed, the court will regard the substance rather than the name. The tax is therefore invalid.

Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 27, 54 L. ed. 355, 366, 30 Sup. Ct. Eep. 190; Home Sav. Bank v. Des Moines, 205 U. S. 510, 51 L. ed. 906, 27 Sup. Ct. Eep. 571 ; Income Tax Cases (Pollock v. Farmers' Loan & T. Co.) 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Eep. 912.

Considered as an excise, the tax is not uniform. It does not apply to all of a class alike, neither is it imposed on all of a class throughout the United States. It is therefore invalid.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673; United States v. Singer, 15 Wall. 111, 121, 21 L. ed. 49, 51 ; Head Money Cases (Edey v. Eobertson) 112 U. S. 580, 594, 28 L. ed. 798, 802, 5 Sup. Ct. Eep. 247; Cooley, Taxn. p. 215; M'CuUoch v. Maryland, 4 Wheat. 316, 435, 4 L. ed. 579, 608.

The tax is not equal on all members of the classes it seeks to reach, exempting without basis some and taxing others. It is therefore invalid.

Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455; Cooley, Const. Lim. pp. 598, 607, 615; People ex rel. Detroit & H. E. Co. V. Salem, 20 Mich. 473, 4 Am. Eep. 400; Albany City Wat. Bank v. Maher, 20 Blatchf. 341, 9 Fed. 884 ; Mugler v. Kansas, 123 U. S. 623, 661, 31 L. ed. 205, 210, 8 Sup. Ct. Eep. 273 ; Coe v. Errol, 116 U. S. 517, 524, 529, 29 L. ed. 715, 717, 719, 6 Sup. Ct. Eep. 475 ; Soon Hing v. Crowley, 113 U. S. 703, 709, 28 L. ed. 1145, 1147, 5 Sup. Ct. Eep. 730 ; Connolly v. Union Sewer Pipe Co. 184 U. S. 540, 560, 46 L. ed. 679, 690, 22 Sup. Ct. Eep. 431 ; Cook v. Marshall County, 196 U. S. 274, 49 L. ed. 476, 25 Sup. Ct. Eep. 233 ; Seaboard Air Line E. Co. v. Seegers, 207 U. S. 76, 52 L. ed. 109, 28 Sup. Ct. Eep. 28.

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In the same way the tax offends the due-process clause of the Constitution. It in effect assesses certain corporations for the benefit of others which are exempted. It is therefore invalid.

Lowell V. Boston, 111 Mass. 454, 15 Am. Eep. 39 ; • Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455 ; Hurtado V. California, 110 U. S. 516, 535, 28 L. ed. 232, 238, 4 Sup. Ct. Rep. Ill, 202 ; Leeper v. Texas, 139 IT. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Rep. 579 ; Giozza v. Tiernan, 148 U. S. 657, 662, 37 L. ed. 599, 601, 13 Sup. Ct. Rep. 721 ; Caldwell v. Texas, 137 U. S. 692, 697, 34 L. ed. 816, 818, 11 Sup. Ct. Rep. 224; Bank of Columbia v. Okely, 4 Wheat. 235, 244, 4 L. ed. 559, 561 ; Madisonville Traction Co. v. St. Bernard Min. Co. 196 U. S. 239, 49 L. ed. 462, 25 Sup. Ct. Rep. 251.

The effect of the tax under the provisions of the present law is to create favored classes, contrary to the provisions of the Constitution.

Citizens' Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455 ; Leeper v. Texas, 139 U. S. 462, 468, 35 L. ed. 225, 227, 11 Sup. Ct. Rep. 579.

The present tax cannot stand as an excise on the privilege to exist, for that right comes from the state, and is not taxable by the Federal government.

Ambrosini v. United States, 187 U. S. 1, 47 L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699 ; Texas v. White, 7 Wall. 700, 19 L. ed. 227; The Collector v. Day (Buffington v. Day) 11 Wall. 113, 127, 20 L. ed. 122, 126 ; Pollock v. Farmers' Loan & T. Co. 157 U. S. 584, 39 L. ed. 820, 15 Sup. Ct. Rep. 673 ; South Carolina v. United States, 199 U. S. 453, 50 L. ed. 266, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737.

The administrative features of the act are invalid because they offend the provisions of articles 4 and 5 of the Amendment to the Constitution.

Boyd V. United States, 116 U. S. 627, 29 L. ed. 749, 6 Sup. Ct. Rep. 524; People ex rel. Ferguson v. Reardon, 197 N". Y. 244, 27 L.R.A. (]Sr.S.) 141, 134 Am. St. Rep. 871, 90 IST. E. 829; Robson v. Doyle, 191 111. 566, 61 IST. E. 435; Counselman V. Hitchcock, 142 U. S. 562, 35 L. ed. 1113, 3 Inters. Com. Rep. 816, 12 Sup. Ct. Rep. 195 ; People ex rel. Taylor v. Forbes, 143 ¥. Y. 219, 38 IST. E. 303; People ex rel. Lewisohn v. O'Brien, 176 IST. Y. 253, 68 K E. 353, 15 Am. Crim. Rep. 97; Emery's Case, 107 Mass. 172, 9 Am. Rep. 22.

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Mr. Howard H. Williams also filed a brief for appellants in No. 456.

Solicitor General Bowers argued the cause, and, with Attorney General Wichersham, filed a brief (by special leave) for the United States:

Numerous decisions of this court show that this tax is an excise upon the conduct or transaction of business. They may be put for convenience into five groups :

(1) A case identical with the present, holding that a tax declared in the statute to be laid on business in an amount "equivalent to" a certain percentage of income is an excise on the transaction of the business.

Spreckels Sugar Eef. Co. v. McClain, 192 T.J. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

(2) Cases even stronger than the *Spreckles Case*, in that they hold that a tax laid in terms on the income of a business — instead of being laid in terms upon the business in an amount equal or equivalent to a percentage of the income — is still an excise upon the business.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; *Michigan C. E. Co. V. Collector* (*Michigan C. E. Co. v. Slack*) 100 U. S. 595, 25 L. ed. 647; *United States v. Erie E. Co.* 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Eep. 223 ; *Springer v. United States*, 102 U. S. 586, 26 L. ed. 253.

(3) Cases holding various taxes to be excises on business, though they are laid in terms upon property engaged in the business.

Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; *Hamilton Mfg. Co. v. Massachusetts*, 6 Wall. 632, 18 L. ed. 904; *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L. ed. 482 ; *United States V. Singer*, 15 Wall. 111, 21 L. ed. 49 ; *Merchants' Nat. Bank v. United States*, 101 U. S. 1, 25 L. ed. 979.

(4) A case exhibiting an excise on business under a statute which, instead of laying the tax in terms on property engaged in the business, required the tax to be equal to a certain percentage of property so engaged.

Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897.

(5) Cases which, while not relating to business, classify as excises various taxes imposed by Congress upon special trans-

actions concerning property, or upon the enjoyment or exercise of particular privileges or advantages connected with property'.

Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99 ; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747 ; Plummer v. Color, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829 ; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775; United States v. Perkins, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073 ; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803 ; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Rep. 305 ; ISTew York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736; ISTicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522.

The established rule that the states may tax property used in interstate commerce, though they may not tax the business of interstate commerce or income from that business, shows that a tax upon the business is different from a tax upon the property employed in that business, and so is not direct.

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters. Com. Rep. 308, 7 Sup. Ct. Rep. 1118; Galveston, H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638; Pullman's Palace Car Co. V. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Rep. 595, 11 Sup. Ct. Rep. 876; Adams Exp. Co. v. Ohio State Auditor, 166 U. S. 185, 41 L. ed. 965, 17 Sup. Ct. Rep. 604; Fargo v. Hart, 193 U. S. 490, 48 L. ed. 761, 24 Sup. Ct. Rep. 498.

A tax on the business of the company is not, in legal view, a tax on the shares of the company's stock or on the income from those shares.

Logan County v. United States, 169 U. S. 255, 42 L. ed. 737, 18 Sup. Ct. Rep. 361; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Plummer v. Color, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep. 829 ; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Rep. 775 ; United States V. Perkins, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Rep. 1073 ; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Rep. 803.

Even a tax laid directly on corporate property is not a tax on the separate shares of the corporation's stock.

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Owensboro Nat. Bank t. Owensboro, 173 U. S. 664, 43 L. ed. 85G, 19 Sup. Ct. Eep. 537 ; New Orleans v. Citizens' Bank, 167 U. S. 371, 42 L. ed. 202, 17 Sup. Ct. Eep. 905 ; Home Sav. Bank v. Des Moines, 205 U. S. 503, 51 L. ed. 901, 27 Sup. Ct. Eep. 571.

The converse proposition, that a tax on shares is not a tax on the property of the company, is also settled.

Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229 ; New York v. Tax & A. Comrs. 4 Wall. 244, 18 L. ed. 344; Bradley v. Illinois, 4 Wall. 459, 18 L. ed. 433 ; First Nat. Bank v. Kentucky, 9 Wall. 353, 19 L. ed. 701; Cleveland Trust Co. V. Lander, 184 T.J. S. Ill, 46 L. ed. 456, 22 Sup. Ct. Eep. 394.

The tax does not become direct in the special case of a company engaged mainly, or even solely, in the business of handling or dealing in real estate.

Spreekels Sugar Eef. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Eep. 376; Com. v. Hamilton Mfg. Co. 12 Allen, 298 ; Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99 ; Thomas V. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305.

The tax is not an infraction of the general power of the states to authorize the formation of corporations and joint stock companies.

Michigan C. E. Co. v. Collector (Michigan C. E. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Erie E. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Eep. 223; Spreekels Sugar Eef. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Eep. 376 ; Veazie Bank v. Fenno, 8 Wall. 533, 547, 19 L. ed. 482, 487 ; Knowlton v. Moore, 178 U. S. 41, 59-61, 44 L. ed. 969, 977, 978, 20 Sup. Ct. Eep. 747; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305; Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522 ; South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737.

The adjudications of this court concerning state taxation of the business or franchises of a corporate agent of the United States are irrelevant to the question of the power of the United States to tax the business or franchises of miscellaneous corporations formed under state laws.

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M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; Osborn V. Bank of United States, 9 "Wheat. 738, 6 L. ed. 204 ; Thomson V. Union P. E. Co. 9 Wall. 579, 19 L. ed. 792 ; Union P. K. Co. V. Peniston, 18 Wall. 5, 21 L. ed. 787 ; California v. Cen-

tral P. R. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Rep. 1073 ; Western U. Teleg. Co. v. Texas, 105 U. S. 460, 26 L. ed. 1067.

Even if a state should actually assume the operation of a railroad, whether directly or indirectly, through a special corporate agency, or should assume to do any other kind of business, the operations of the state in the business would be taxable by the United States.

South Carolina v. United States, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737.

If the business of a public-service company, incorporated by a state, could be deemed an activity of the state itself, and even if such activity of the state could be held to be beyond the taxing power of the United States unless the state should assent to the tax, still such assent by the state to taxation of the business by the United States would be inferred, in the absence of legislative declaration to the contrary by the state.

Eeagan v. Mercantile Trust Co. 154 U. S. 413, 38 L. ed. 1028, 4 Inters. Com. Eep. 575, 14 Sup. Ct. Eep. 1060.

The tax is not imposed upon state or municipal bonds, or upon the income of such bonds, forming part of the business assets of the company whose business is taxed ; and the company's income from such bonds is to be included in the computation of its net income.

Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Merchants' Nat. Bank v. United States, 101 U. S. 1, 25 L. ed. 979 ; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 ; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593 ; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Eep. 775; Plummer v. Color, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Eep. 829 ; Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; New York v. Tax & A. Comrs. 4 Wall. 244, 18 L. ed. 344 ; Bradley v. Illinois, 4 Wall. 459, 18 L. ed. 433 ; First Nat. Bank v. Kentucky,

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9 Wall. 353, 19 L. ed. 701 ; Cleveland Trust Oo. v. Lander, 184 U. S. Ill, 46 L. ed. 456, 22 Sup. Ct. Eep. 394; Ficklen v. Taxing Dist. 145 U. S. 1, 36 L. ed. 601, 4 Inters. Com. Eep. 79, 12 Sup. Ct. Eep. 810; Tiernan v. Einkler, 102 U. S. 127, 26 L.

ed. 104.

The constitutional requirement of uniformity in "all duties, imposts, and excises" imposed by Congress (clause 1 of § 8 of art. 1, of the Constitution) calls for no more than geographical uniformity.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747.

The propriety of classifying corporations and joint stock companies together, for like taxation, is illustrated, and indeed concluded, by Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 19 L. ed. 1029.

An excise is least amenable, of all taxes, to the rule of uniformity ; and in the enactment of excises, the greatest freedom of classification has been immemorially exercised both by Congress and by other legislatures.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Eep. 233 ; Murdock v. Ward, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Eep. 775 ; United States v. Singer, 15 Wall. Ill, 21 L. ed. 49 ; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305; Cornell v. Coyne, 192 U. S. 418, 48 L. ed. 504, 24 Sup. Ct. Eep. 383 ; Mcol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522; Liverpool & L. Life & F. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 19 L. ed. 1029 ; Beers v. Glynn, 211 U. S. 477, 53 L. ed. 290, 29 Sup. Ct. Eep. 186 ; ISTew York ex rel. Hatch v. Eeardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Eep. 188, 9 A. & E. Ann. Cas. 736 ; Armour Packing Co. v. Lacy, 200 U. S. 226, 50 L. ed. 451, 26 Sup. Ct. Eep. 232 ; ISTew York ex rel. Metropolitan Street E. Co. v. ISTew York State Tax Comrs. 199 U. S. 1, 50 L. ed. 65, 25 Sup. Ct. Eep. 705, 4 A. & E. Ann. Cas. 381; Savannah, T. & I. of H. E. Co. v. Savannah, 198 U. S. 392, 49 L. ed. 1097, 25 Sup. Ct. Eep. 690; American Sugar

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Eef. Co. V. Louisiana, 179 TJ. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43 ; Magoun v. Illinois Trust, & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Eep. 594; Pacific Exp. Co. v. Seibert, 142 U. S. 339, 35 L. ed. 1035, 3 Inters. Com. Rep. 810, 12 Sup. Ct. Rep. 250; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533; Otis v. Parker, 187 U. S. 606, 47 L. ed. 323, 23 Sup. Ct. Rep. 168 ; Spreckel Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376 ; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

None of the special rules prescribed by the taxing statute concerning exemptions or concerning application or computation of the tax produces any lack of necessary uniformity.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Bell's Gap R. Co. v. Pennsylvania, 134 T.J. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533 ; Mercantile Nat. Bank v. New York, 121 U. S. 138, 30-L. ed. 895, 7 Sup. Ct. Rep. 826 ; American Sugar Ref. Co. v. Louisiana, 179 U. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43 ; Cook V. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233 ; Petersburg v. Petersburg Benev. Mechanics' Asso. 78 Va. 431 ; Mercantile Nat. Bank v. Hubbard, 98 Fed. 465 ; First Nat. Bank v. Chapman, 173 U. S. 205, 43 L. ed. 669, 19 Sup. Ct. Rep. 407 ; United States v. Singer, 15 Wall. Ill, 21 L. ed. 49; Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897 ; Hamilton Mfg. Co. v. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907 ; District of Columbia v. Brooke, 214 U. S. 138, 53 L. ed. 941, 29 Sup. Ct. Rep. 560; New York ex rel. Hatch v, Reardon, 204 U. S. 152, 51 L. ed. 415, 27 Sup. Ct. Rep. 188, 9 A. & E. Ann. Cas. 736 ; Michigan C. R. Co. v. Collector (Michigan C. R. Co. V. Slack) 100 U. S. 595, 25 L. ed. 647; New York ex rel. Metropolitan Street R. Co. v. New York State Tax Comrs. 199 U. S. 1, 50 L. ed. 65, 25 Sup. Ct. Rep. 705, 4 A. & E. Ann. Cas. 381.

The company required to pay the tax is not subject to any unreasonable search or seizure by any of the administrative provisions of the statute.

Re Chapman, 166 U. S. 661, 41 L. ed. 1154, 17 Sup. Ct.

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Eep. 677; Adams v. New York, 192 U. S. 585, 48 L. ed. 575, 24 Sup. Ct. Eep. 372.

Mr. William 1). Guthrie argued the cause, and, with Messrs. Victor Norawetz and Howard Van Sinderen, filed a brief for appellees in ISFo. 410 :

A tax upon income derived from the carrying on or doing business is an excise, and not a direct tax, within the meaning of the Constitution.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 443, 19 L. ed. 95, 98 ; Michigan C. E. Co. v. Collector (Michigan C. E. Co. v. Slack) 100 U. S. 595, 598, 25 L. ed. 647, 648; Springer v. United States, 102 U. S. 586, 598, 26 L. ed. 253, 257; Spreckels Sugar Eef. Co. V. McClain, 192 U. S. 397, 411, 48 L. ed. 496, 501, 24 Sup. Ct. Eep. 376; South Carolina v. United States, 199 U. S. 437, 454, 50 L. ed. 261, 266, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737.

The provision of the 5th Amendment, that no person shall be deprived of property without due process of law, is sufficient to prevent any such impairment or destruction of contract rights.

Sinking Fund Cases, 99 U. S. 700, 718, 25 L. ed. 496, 501 ;
United States v. Union P. E. Co. 160 U. S. 1, 33, 40 L. ed,
319, 330, 16 Sup. Ct. Eep. 190.

The question now presented is whether or not income can nevertheless be indirectly taxed by means of a so-called special excise tax upon the carrying on or doing business by corporations ; in other words, by merely changing the name of the tax.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 654, 39
L. ed. 759, 844, 15 Sup. Ct. Eep. 673.

Undoubtedly, public utilities, when owned by the state itself, and not conducted by it as a private business for profit, ought not to be taxable by Congress. But it is well established that such public utilities, when owned and operated by private corporations, or by individuals for purposes of profit, are proper subjects of taxation (Union P. E. Co. v. Peniston, 18 Wall. 5, 31, 21 L. ed. 787, 791), and that, if owned and operated by the state as a business for profit, they become subject to taxation by Congress within the principle of South Carolina v.

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United States, 199 T.J. S. 437, 50 L. ed. 261, 26 Sup. Ct Eep.
110, 4 A. & E. Ann. Cas. 737.

A special franchise from the state of New York is entirely distinct from the so-called franchise to be a corporation.

New York v. Bryan, 196 N. Y. 163, 89 N. E. 467; People
V. O'Brien, 111 N. Y. 47, 2 L.E.A. 255, 7 Am. St. Eep. 684,
18 N. E. 692.

A Federal tax on the franchise to condemn property and to operate the railroad in the state of New York might come within the ruling of the court in the case of California v. Central P. K. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073 ; but that ruling certainly would not apply to a tax upon the business of the railroad corporation. This case did not overrule or qualify Union P. E. Co. v. Peniston, 18 Wall. 5, 21 L. ed. 787.

A tax upon the mere carrying on of business, levied impartially and uniformly upon all corporations, is essentially different from a tax on so-called special franchises, and from a tax on the franchise to be a corporation, or to carry on business in a corporate form.

There is a serious question as to whether Congress may select state corporations as a separate class, and impose upon them an excise tax "with respect to the carrying on or doing business by such corporation," while exempting or not similarly taxing individuals and copartnerships engaged in carrying on or doing identically the same business, under substantially like conditions.

Southern E. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Eep. 287, 17 A. & E. Ann. Cas. 1247.

If a state, aside from its power to create, regulate, or exclude corporations, could not discriminate against corporations and in favor of individuals or partnerships without violating the 14th Amendment, then any attempt by Congress so to discriminate may likewise be unconstitutional under the 5th Amendment.

Carroll v. Greenwich Ins. Co. 199 U. S. 401, 410, 50 L. ed. 246, 250, 26 Sup. Ct. Eep. 66.

The classification of corporations as a separate class by the states has been sustained on grounds which are, at least partly, unavailable in support of an act of Congress.

Delaware Eailroad Tax, 18 Wall. 206, 21 L. ed. 888 ; Bell's

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Gap R. Co. V. Pennsylvania, 134 U. S. 232, 237, 33 L. ed. 892, 895, 10 Sup. Ct. Eep. 533 ; Home Ins. Co. v. New York, 134 U. S. 594, 606, 33 L. ed. 1025, 1031, 10 Sup. Ct. Rep. 593; New York v. Roberts, 171 U. S. 658, 665, 43 L. ed. 323, 326, 19 Sup. Ct. Rep. 58 ; Florida C. R. Co. v. Reynolds, 183 U. S. 471, 477, 46 L. ed. 283, 286, 22 Sup. Ct. Rep. 176; Berea College V. Kentucky, 211 U. S. 45, 54, 53 L. ed. 81, 85, 29 Sup. Ct. Rep. 33.

Congress cannot constitutionally impose an excise tax measured by nontaxable income.

Pollock V. Farmers' Loan & T. Co. 158 U. S. 635, 39 L. ed. 1125, 15 Sup. Ct. Rep. 912.

If the argument now advanced on behalf of the United States be sound, many of the decisions of the court sustaining excise taxes on corporations have proceeded on entirely erroneous reasoning.

Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 410,

417, 48 L. ed. 496, 500, 503, 24 Sup. Ct. Rep. 376; Galveston, H. & S. A. R. Co. V. Texas, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Rep. 638; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; Southern R. Co. V. Greene, 216 U. S. 400, 416, 54 L. ed. 536, 541, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247; Home Sav. Bank v. Des Moines, 205 U. S. 503, 519, 51 L. ed. 901, 910, 27 Sup. Ct. Rep. 571 ; Louisville & J. Ferry Co. v. Kentucky, 188 U. S. 385, 396, 398, 47 L. ed. 513, 518, 519, 23 Sup. Ct. Rep. 463; State Tonnage Tax Cases (Cox v. Lott) 12 Wall. 204, 217, 20 L. ed. 370, 374.

The underlying principle of these decisions is that a license or occupation tax cannot be imposed by a state upon foreign corporations, measured by the amount of nontaxable property or the amount of nontaxable interstate business of the corporations, and that any such attempt would establish an unconstitutional basis of classification for purposes of taxation ; in other words, that a tax cannot be measured by nontaxable property or income. If we apply the same principle to the case at bar, it must follow that Congress cannot, directly or indirectly, measure an excise tax on corporations or individuals by property or income which is not taxable at all, or only taxable by a direct and apportioned tax.

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The act of August 5, 1909, should be construed as imposing an excise tax only upon income derived from the carrying on or doing business.

United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U. S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Rep. 527; Kepner v. United States, 195 U. S. 100, 125, 49 L. ed. 114, 122, 24 Sup. Ct. Rep. 797, 1 A. & E. Ann. Cas. 655; United States v. Nix, 189 U. S. 199, 205, 47 L. ed. 775, 777, 23 Sup. Ct. Rep. 495; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 417, 48 L. ed. 496, 503, 24 Sup. Ct. Rep. 376.

Congress presumably deemed it unjust to compel a holding company to pay a tax upon income derived from dividends of other companies which had already paid the tax, although if a corporation has been organized for the purpose of carrying on the business of holding securities, there is, perhaps, no reason why it cannot be subjected to taxation upon net income or profits derived from that occupation or business.

People ex rel. Vandervoort Realty Co. v. Glynn, 194 N. Y. 389, 87 K E. 434.

The exception or exclusion of dividends from stocks of other corporations does not signify that the general clause "from all sources" must be given any broader interpretation than if no such exception had been made.

Baggaley v. Pittsburg & L. S. Iron Co. 33 C. C. A. 202, 62 U. S. App. 683, 90 Fed. 638 ; Mullins v. Surrey County, L. R. 5 Q. B. Div. 173 ; West Derby Union v. Metropolitan L. Assur. Soc. [1897] A. C. 652, 66 L. J. Ch. K S. 726, 77 L. T. IST. S. 284, 61 J. P. 820; Georgia R. & Bkg. Co. v. Smith, 128 U. S. 174, 181, 32 L. ed. 377, 380, 9 Sup. Ct. Rep. 47; Interstate Commerce Commission v. Baird, 194 U. S. 25, 36, 37, 48 L. ed. 860, 865, 866, 24 Sup. Ct. Rep. 563 ; American Exp. Co. V. United States, 212 U. S. 522, 534, 53 L. ed. 635, 640, 29 Sup. Ct. Eep. 315.

Under state laws imposing taxes upon the capital of corporations employed in business, or receipts derived from business, it is quite often necessary to make similar inquiry into the character and use of their property and the conduct of their businesses.

People ex rel. Singer Mfg. Co. v. Wemple, 150 N. Y. 46, 44 ISr. E. 787 ; People ex rel. Chicago Junction R. & Union Stock-

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yards Co. v. Eoberts, 154 JST. Y. 1, 47 JST. E. 974; People ex rel. Niagara Eiver Hydraulic Co. v. Eoberts, 30 App. Div, 180, 51 N. Y. Supp. 771, affirmed in 157 N. Y. 676, 51 N. E. 1093 ; People ex rel. Et. George Eealty Co. v. Miller, 179 N. Y. 49, 71]Sr. E. 463 ; People ex rel. Interborough Eapid Transit Co. V. Williams, 200 IST. Y. 103, 93 N. E. 505 ; Com. v. Standard Oil Co. 101 Pa. 119 ; Cooper Mfg. Co. v. Eerguson, 113 U. S. 727, 28 L. ed. 1137, 5 Sup. Ct. Eep. 739 ; Ee Alabama & C. E. Co. 9 Blatcbf. 390, Fed. Cas. ISTo. 124; Gilchrist v. Helena, H. S. & S. E. Co. 47 Fed. 593 ; Oakland Sugar Mill Co. v. Fred W. Wolf Co. 55 C. C. A. 93, 118 Fed. 239 ; New York & S. Constr. Co. v. Winton, 208 Pa. 471, 57 Atl. 955; Colonial Trust Co. V. Montello Brick Works, 97 C. C. A. 144, 172 Fed. 311; General Conference v. Berkey, 156 Cal. 466, 105 Pac. 411 ; Missouri Coal & Min. Co. v. Ladd, 160 Mo. 435, 61 S. W. 191.

Messrs. William N. Dyhman and Arthur E. Goddard filed a brief for appellees in No. 409 :

The tax in question does not involve an unconstitutional interference with the sovereign powers and functions of the states.

South Carolina v. United States, 199 U. S. 437, 454, 459, 50 L. ed. 261, 266, 268, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737; License Tax Cases, 5 Wall. 462, 475, 18 L. ed. 497, 502; McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561 ; Plummer v. Coler, 178 U. S. 115, 137, 44 L. ed. 998, 1009, 20 Sup. Ct. Eep. 829 ; Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99 ; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; Snyder v. Bettman, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Eep. 803.

A distinction exists between the governmental and quasi private functions and instrumentalities of the state.

Ee Eapid Transit Comrs. 197 N. Y. 81, - L.E.A. (]Sr.S.)
- , 90 N. E. 456, 18 A. & E. Ann. Cas. 366.

If, as is claimed. Congress cannot tax corporations chartered by the states, and if this is one of the subjects of taxation over which Congress has no power, such as exports, then it must follow (Fairbank v. United States, 181 U. S. 283, 45 L. ed. 862, 21 Sup. Ct. Eep. 648, 15 Am. Crim. Eep. 135) that the result cannot be accomplished in any manner, directly or indirectly. Foster Income Tax.' - 75.

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ly, anl whether or not individuals as well as corporations are included in the tax. That this is not the case is shown by the following, among other cases :

Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376; Thomas v. United States, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305 ; Michigan C. E. Co. V. Collector (Michigan C. E. Go. v. Slack) 100 U. S. 595, 25 L. ed. 647; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95.

In everj case in which it has been held, directly or indirectly, that a state may not tax a corporate franchise granted by Congress, it will be fond that the real reason for this is not that the mere franchise, as such, is a part and parcel of the sovereign governmental instrumentalities of the Federal government, but that the functions, duties, and operations of such corporations fall within the protection of the powers delegated to Congress, and therefore are not subject to interference by the states.

M'Culloch V. Maryland, 4 Wheat. 316, 4 L. ed. 579 ; Osborn V. Bank of United States, 9 Wheat. 738, 6 L. ed. 204; California V. Central P. E. Co. 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073 ; Eeagan v. Mercantile Trust Co. 154 U. S. 413, 38 L. ed. 1028, 4 Inters. Com. Eep. 575, 14 Sup. Ct. Eep. 1060.

A Federal tax upon the income of corporations is not a direct tax, because it is rather an excise upon the artificial rights of corporations who hold property and receive income therefrom,, than a direct tax upon the property.

Knowlton v. Moore, 178 U. S. 41, 59, 44 L. ed. 969, 977, 20 Sup. Ct. Eep. 747; Plummer v. Color, 178 U. S. 115, 137, 44 L. ed. 998, 1009, 20 Sup. Ct. Eep. 829 ; Nicol v. Ames, 173 U. S. 509, 521, 43 L. ed. 786, 793, 19 Sup. Ct. Eep. 522.

The tax is a tax upon the doing of business by corporations and joint stock companies. Their right of doing business, apart

from their right to exist and hold property, considered above, is distinct from the natural right of individuals in general to engage in business, just as the right to buy and sell property at an exchange is distinct from the general natural right to buy and sell property anywhere. A tax on the former is an excise tax on a privilege, while a tax on the latter may be held to be a direct tax on property.

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Nicol V. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522.

The Federal government in the past has imposed taxes falling only upon corporations engaged in certain businesses, without the slightest suggestion or objection that the taxes were improper because not excise taxes on business.

Veazie Bank v. Tenno, 8 Wall. 533, 19 L. ed. 482 ; Michigan C. K. Co. V. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647; United States v. Baltimore & O. E. Co. 17 Wall.- 322, 21 L. ed. 597.

Measuring excise or privilege taxes by gross receipts or net income from all sources, whether or not directly derived from the privilege in question, is an extremely common method, and has frequently been upheld by this court.

Maine v. Grand Trunk R. Co. 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Eep. 807, 12 Sup. Ct. Eep. 121, 163 ; Provident Inst. V. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Hamilton Mfg. Co. V. Massachusetts, 6 Wall. 632, 18 L. ed. 904; Pacific Ins. Co. V. Soule, 7 Wall. 433, 19 L. ed. 95 ; State E. Tax Cases, 92 U. S. 575, 23 L. ed. 663 ; Western U. Teleg. Co. v. Atty. Gen. 125 U. S. 530, 31 L. ed. 790, 8 Sup. Ct. Eep. 961; Bell's Gap E. Co. V. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Eep. 533; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Eep. 595, 11 Sup. Ct. Eep. 876 ; Postal Teleg. Cable Co. v. Adams, 155 U. S. 688, 39 L. ed. 311, 5 Inters. Com. Eep. 1, 15 Sup. Ct. Eep. 268, 360 ; Home Ins. Co. v. IS^ew York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593 ; McHenry v. Alford, 168 H. S. 651, 42 L. ed. 614, 18 Sup. Ct. Eep. 242.

The tax imposed by the act is "uniform."

Head Money Cases (Edye v. Eobertson) 112 U. S. 580, 28 L. ed. 798, 5 Sup. Ct. Eep. 247; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; Patton v. Brady, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; McCray V. United States, 195 U. S. 27, 50, 49 L. ed. 78, 93, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561.

A tax upon the franchises or business of state railroads or public-service corporations is not an interference with govern-

mental functions or instrumentalities of the state, and is valid.

South Carolina v. United States, 199 U. S. 437, 50 L. ed.

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261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737; Ee Rapid Transit Comrs. 197 W. Y. 81, - L.E.A. (]Sr.S.) - , 90 N. E. 456, 18 A. & E. Ann. Cas. 366 ; Michigan C. E. Co. v. Collector (Michigan C. E. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647.

Messrs. Charles A. Snow and Joseph H. Knight filed a brief for appellees in No. 425:

The taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 446, 19 L. ed. 95, 99; McCray v. United States, 195 U. S. 27, 59, 49 L. ed. 78, 97, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561.

Under the rule of stare decisis the corporation tax must be held to be an "excise." Otherwise, numerous decisions holding identical or analogous taxes to be "excises" must be overruled.

Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95; Michigan C. E. Co. V. Collector (Michigan C. E. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647 ; United States v. Erie E. Co. 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223 ; Western Union E. Co. V. United States, 101 U. S. 543, 550, 25 L. ed. 1068, 1070 ; Bailey v. New York C. & H. E. E. Co. 106 U. S. 109, 115, 27 L. ed. 81, 83, 1 Sup. Ct. Rep. 62 ; Memphis & C. R Co. V. United States, 108 U. S. 228, 234, 27 L. ed. 711, 713, 2 Sup. Ct. Rep. 482 ; Little Miami & C. & X. E. Co. v. United States, 108 U. S. 277, 279, 27 L. ed. 724, 725, 2 Sup. Ct. Rep. 27 ; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 ; Hamilton Mfg. Co. V. Massachusetts, 6 Wall. 632, 638, 18 L. ed. 904, 906 ; Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897 ; Provident Inst. v. Massachusetts, 6 Wall. 611, 18 L. ed. 907; Portland Bank v. Apthorp, 12 Mass. 256; Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593 ; Pullman's Palace Car Co. v. Pennsylvania, 141 U. S. 18, 35 L. ed. 613, 3 Inters. Com. Rep. 595, 11 Sup. Ct. Rep. 876 ; State Tax on R. Gross Receipts, 15 Wall. 284, 293, 21 L. ed. 164, 167; Springer v. United States, 102 U. S. 586, 26 L. ed. 253; Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 413, 48 L. ed. 496, 501, 24 Sup. Ct. Rep. 376; E:nowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747; Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99; Plummer v. Coler, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Rep.

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829; *Nicol v. Ames*, 173 T.J. S. 509, 43 L. ed. 786, 19 Sup. Ct. Eep. 522 ; *Treat v. White*, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Eep. 611 ; *Patton v. Brady*, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; *Thomas v. United States*, 192 T.J. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305 ; *McCray v. United States*, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561 ; *New York v. Eoberts*, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Eep. 58 ; *Snyder v. Bettman*, 190 U. S. 249, 253, 47 L. ed. 1035, 1037, 23 Sup. Ct. Eep. 803.

Being "excises," their validity is not questionable by reason of the fact that United States tax-exempt securities, or state or municipal bonds, or other instrumentalities of state governments, are included within the estate or capital thus subjected to an excise tax.

Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99 ; *Knowlton v. Moore*, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; *Plummer v. Color*, 178 U. S. 115, 44 L. ed. 998, 20 Sup. Ct. Eep. 829 ; *Murdock v. Ward*, 178 U. S. 139, 44 L. ed. 1009, 20 Sup. Ct. Eep. 775 ; *Mager v. Grima*, 8 How. 490, 12 L. ed. 1168; *Snyder v. Bettman*, 190 U. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Eep. 803; *United States v. Perkins*, 163 U. S. 625, 41 L. ed. 287, 16 Sup. Ct. Eep. 1073; *Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Eep. 594; *New York v. Eoberts*, 171 U. S. 658, 43 L. ed. 323, 19 Sup. Ct. Eep. 58; *Orr v. Gilman*, 183 U. S. 278, 46 L. ed. 196, 22 Sup. Ct. Eep. 213 ; *Billings v. Illinois*, 188 U. S. 97, 47 L. ed. 400, 23 Sup. Ct. Eep. 272; *Blackstone v. Miller*, 188 U. S. 189, 47 L. ed. 439, 23 Sup. Ct. Eep. 277; *Campbell v. California*, 200 U. S. 87, 50 L. ed. 382, 26 Sup. Ct. Eep. 182; *Cahen v. Brewster*, 203 U. S. 543, 51 L. ed. 310, 27 Sup. Ct. Eep. 174, 8 A. & E. Ann. Cas. 215; *Chanler v. Kelsey*, 205 U. S. 466, 51 L. ed. 882, 27 Sup. Ct. Eep. 550 ; *Buck v. Beach*, 206 U. S. 392, 408, 51 L. ed. 1106, 1114, 27 Sup. Ct. Eep.

712, 11 A. & E. Ann. Cas. 732.

As an excise tax, the corporation tax is uniform and otherwise fully complies with all constitutional requirements.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747; *Patton v. Brady*, 184 U. S. 608, 622, 623, 46 L. ed.

713, 720, 721, 22 Sup. Ct. Eep. 493.

Corporate franchises are properly subject to Federal excise

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taxes, notwithstanding the fact that the corporation may not be engaged in interstate Commerce, and so is not subject in any way to Federal regulation or control.

Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747 ; Snyder v. Bettman, 190 TJ. S. 249, 252, 47 L. ed. 1035, 1036, 23 Sup. Ct. Eep. 803 ; Scholey v. Eew, 23 Wall. 331, 23 L. ed. 99.

The classification of corporations and noncorporations presents such obvious distinctions that it is unnecessary to argue that there is a reasonable basis for such classification.

McCray v. United -States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Gas. 561 ; Board of Education v. Illinois, 203 TJ. S. 553, 51 L. ed. 314, 27 Sup. Ct. Eep. 171, 8 A. & E. Ann. Cas. 157.

The decisions of this court give no countenance to the theory that the selection by Congress of one class as a proper subject for excise taxation, rather than another class, presents any reason for judicial interference, upon the ground that any provision of the Constitution has been contravened.

Spencer v. Merchant, 125 TJ. S. 345, 355, 31 L. ed. 763, 767, 8 Sup. Ct. Eep. 921; McCray v. TUnited States, 195 TJ. S. 27, 61, 49 L. ed. 78, 97, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561; Treat v. White, 181 TJ. S. 264, 269, 45 L. ed. 853, 855, 21 Sup. Ct. Eep. 611 ; Patton v. Brady, 184 U. S. 608, 623, 46 L. ed. 713, 720, 22 Sup. Ct. Eep. 493.

An excise tax cannot be attacked upon the ground that it directly taxes or interferes with the instrumentalities of the state or Eederal governments, for it is not a tax on property, and the kind of property taxed indirectly is a matter of no consequence.

Van Allen v. Assessors (Churchill v. Utica) 3 Wall. 573, 18 L. ed. 229 ; Snyder v. Bettman, 190 TJ. S. 249, 47 L. ed. 1035, 23 Sup. Ct. Eep. 803 ; Home Ins. Co. v. JSTew York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593 ; South Carolina v. United States, 199-U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Eep. 110, 4 A. & E. Ann. Cas. 737; Knowlton v. Moore, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747.

The Senate has the power to amend a revenue bill. This power to amend is not confined to the elimination of provisions contained in the original act, but embraces as well the addition

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of such provisions thereto as may render the original act satisfactory to the body which is called upon to support it. It

has, in fact, been held that the substitution of an entirely new measure for the one originally proposed can be supported as a valid amendment.

Brake v. Collison, 122 Fed. 722.

Mr. Jaanes L. Quackenbush filed a statement for appellees in ISTo. 442.

Solicitor General Lehmann (by special leave) argued the cause for the United States on reargument.

Mr. Justice Day delivered the opinion of the court :

These cases involve the constitutional validity of § 38 of the act of Congress approved August 5, 1909, known as "the corporation tax" law. 36 Stat, at L. 11, 112-117, chap. 6, U. S. Comp. Stat. Supp. 1909, pp. 659, 844-849.

It is contended in the first place that this section of the act is unconstitutional, because it is a revenue measure, and originated in the Senate in violation of § 7 of article 1 of the Constitution, providing that "all bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with the amendments, as on other bills." The history of the act is contained in the government's brief, and is accepted as correct, no objection being made to its accuracy.

This statement shows that the tariff bill of which the section under consideration is a part, originated in the House of Representatives, and was there a general bill for the collection of revenue. As originally introduced, it contained a plan of inheritance taxation. In the Senate the proposed tax was removed from the bill, and the corporation tax, in a measure, substituted therefor. The bill having properly originated in the House, we perceive no reason in the constitutional provision relied upon why it may not be amended in the Senate in the manner which it was in this case. The amendment was germane to the subject-matter of the bill, and not beyond the power of the Senate to propose. In thus deciding we do not wish to be regarded as holding that the journals of the House and Senate may be examined to invalidate an act which has been passed and signed by the presiding officers of the House and Senate, and

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approved by the President, and duly deposited with the State Department. Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. ed. 294, 12 Sup. Ct. Eep. 495; Harwood v. Wentworth, 162 U. S. 547, 40 L. ed. 1069, 16 Sup. Ct. Eep. 890; Twin City Bank v. ISTebeker, 167 U. S. 196, 42 L. ed. 134, 17 Sup. Ct. Eep. 766.

In order to have in mind some of the more salient features of the statute, with a view to its interpretation, a part of the first

paragraph is here set out, as follows:

"Sec. 38. That every corporation, joint stock company, or association organized for profit and having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country, and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association ; or insurance company equivalent to one per centum upon the entire net income over and above five thousand dollars, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed; or, if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia, during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed."

A reading of this portion of the statute shows the purpose and design of Congress in its enactment and the subject-matter of its operation. It is at once apparent that its terms embrace corporations and joint stock companies or associations which are organized for profit, and have a capital stock represented by shares. Such joint stock companies, while differing somewhat

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from corporations, have many of their attributes and enjoy many of their privileges. To these are added insurance companies, and they, as corporations, joint stock companies, or associations, must be such as are now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of Congress applicable to Alaska and the District of Columbia. Each and all of these, the statute declares, shall be subject to pay annually a special excise tax with respect to the carrying on and doing business by such corporation, joint stock company or association, or insurance company. The tax is to be equivalent to 1 per cent of the entire net income over and above \$5,000 received by such cor-

poration or company from all sources during the year, excluding, however, amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by the statute. Similar companies organized under the laws of any foreign country, and engaged in business in any state or territory of the United States, or in Alaska or the District of Columbia, are required to pay the tax upon the net income over and above \$5,000 received by them from business transacted and capital invested within the United States, the territories, Alaska, and the District of Columbia, during each year, with the like exclusion as to amounts received by them as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed.

While the mere declaration contained in a statute that it shall be regarded as a tax of a particular character does not make it such if it is apparent that it cannot be so designated consistently with the meaning and effect of the act, nevertheless the declaration of the lawmaking power is entitled to much weight, and in this statute the intention is expressly declared to impose a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company. It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 1 per

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centum upon the entire net income over and above \$5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business, with the advantages which inhere in the peculiarities of corporate or joint stock organization of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity. In the case of the insurance companies, the tax is imposed upon the transaction of such business by companies organized under the laws of the United States or any state or territory, as heretofore stated.

This tax, it is expressly stated, is to be equivalent to 1 per centum of the entire net income over and above \$5,000 received from all sources during the year, — this is the measure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above \$5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the meas-

ure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source. This view of the measure of the tax is strengthened when we note that as to organizations under the laws of foreign countries, the amount of net income over and above \$5,000 includes that received from business transacted and capital invested in the United States, the territories, Alaska, and the District of Columbia.

It is further strengthened when the subsequent sections are considered as to deductions in ascertaining net income and requiring returns from those subject to the act. Under the second paragraph the net income is to be ascertained by certain deductions from the gross amount of income received within the year "from all sources;" and the return to be made to the collector of internal revenue under the third section is required to show the gross amount of the income received during the year "from all sources." The evident purpose is to secure a return of the entire income, with certain allowances and deductions

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which do not suggest a restriction to income derived from property actively engaged in the business. This interpretation of the act, as resting upon the doing of business, is sustained by the reasoning in *Spreckels Sugar Eef. Co. v. McClain*, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Eep. 376, in which a special tax measured by the gross receipts of the business of refining oil and sugar was sustained as an excise in respect to the carrying on or doing of such business.

Having thus interpreted the statute in conformity, as we believe, with the intention of Congress in passing it, we proceed to consider whether, as thus construed, the statute is constitutional.

It is contended that it is not; certainly so far as the tax is measured by the income of bonds nontaxable under Federal statutes, and of municipal and state bonds beyond the Federal power of taxation. And so of real and personal estates, because as to such estates the tax is direct, and required to be apportioned according to population among the states. It is insisted that such must be the holding unless this court is prepared to reverse the income tax cases decided under the act of 1894. [28 Stat, at L. 509, chap. 349.] *Pollock v. Farmers' Loan & T. Co.* 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673, s. c. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Eep. 912.

The applicable provisions of the Constitution of the United States in this connection are found in articles 1, § 8, clause 1, and in article 1, § 2, clause 3, and article 1, § 9, clause 4. They are respectively:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the

common defense and general welfare of the United States ; but all duties, imposts, and excises shall be uniform throughout the United States."

"Representatives and direct taxes shall be apportioned among the several states which may be included within the Union, according to their respective numbers."

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

It was under the latter requirement as to apportionment of direct taxes according to population that this court in the Pol-

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lock Case held the statute of 1894 to be unconstitutional. Upon* the rehearing of the case Mr. Chief Justice Fuller, who spoke for the court, summarizing the effect of the decision, said :

"We have considered the act only in respect of the tax on income derived from real estate, and from invested personal property, and have not commented on so much of it as bears on; gains or profits from business, privileges, or employments, in view of the instances in which taxation on business, privileges,, or employments has assumed the guise of an excise tax and been sustained as such." 158 U. S. 635.

And as to excise taxes, the chief justice said:

"We do not mean to say that an act laying by apportionment a direct tax on all real estate and personal property, or the income thereof, might not also lay excise taxes on business, privileges, employments, and vocations." (P. 637.)

The Pollock Case was before this court in Knowlton v. Moore, 178 tr. S. 41, 44 L. ed. 969, 20 Sup. Ct. Eep. 747. In that case this court sustained an excise tax upon the transmission of property by inheritance. It was contended there, as here, that the case was ruled by the Pollock case, and of that case this court^ speaking by the present chief justice, said :

"The issue presented in the Pollock Case was whether an income tax was direct within the meaning of the Constitution.- The contentions which the case involved were thus presented. On the one hand, it was argued that only capitation taxes and taxes on land as such were direct, within the meaning of the Constitution, considered as a matter of first impression, and that previous adjudications had construed the Constitution as having that import. On the other hand, it was asserted that, in principle, direct taxes, in the constitutional sense, embraced not only taxes on land and capitation taxes, but all burdens laid on real or personal property because of its ownership, which were equivalent to a direct tax on such property, and it was affirmed)

that the previous adjudications of this court had settled nothing.
to the contrary.

"Undoubtedly, in the course of the opinion in the Pollock Case, it was said that if a tax was direct within the constitutional sense, the mere erroneous qualification of it as an excise or duty would not take it out of the constitutional requirement

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as to apportionment. But this language related to the subject matter under consideration, and was but a statement that a tax which was in itself direct, because imposed upon property solely by reason of its ownership, could not be changed by affixing to it the qualification of excise or duty. Here we are asked to decide that a tax is a direct tax on property which has at all times been considered as the antithesis of such a tax; that is, that it has ever been treated as a duty or excise, because of the particular occasion which gives rise to its levy.

"Considering that the constitutional rule of apportionment had its origin in the purpose to prevent taxes on persons solely because of their general ownership of property from being levied by any other rule than that of apportionment, two things were decided by the court : First, that no sound distinction existed between a tax levied on a person solely because of his general ownership of real property, and the same tax imposed solely because of his general ownership of personal property. Secondly, that the tax on the income derived from such property, real or personal, was the legal equivalent of a direct tax on the property from which said income was derived, and hence must be apportioned. These conclusions, however, lend no support to the contention that it was decided that duties, imposts, and excises, which are not the essential equivalent of a tax on property generally, real or personal, solely because of its ownership, must be converted into direct taxes, because it is conceived that it would be demonstrated by a close analysis that they could not be shifted from the person upon whom they first fall."

The same view was taken of the Pollock Case in the subsequent case of Spreckels Sugar Eef. Co. v. McClain, supra.

The act now under consideration does not impose direct tax-

ation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under article 1, § 8, clause 1 of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States.

Within the category of indirect taxation, as we shall have further occasion to show, is embraced a tax upon business done in a corporate capacity, which is the subject-matter of the tax

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imposed in the act under consideration. The Pollock Case construed the tax there levied as direct, because it was imposed upon property simply because of its ownership. In the present case' the tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed. The difference between the acts is not merely nominal, but rests upon substantial differences between the mere ownership of property and the actual doing of business in a certain way.

It is unnecessary to enter upon an extended consideration of the technical meaning of the term "excise." It has been the subject-matter of considerable discussion, — the terms duties, imposts, and excises are generally treated as embracing the indirect forms of taxation contemplated by the Constitution. As Mr, Chief Justice Fuller said in the Pollock Case, supra :

"Although there have been from time to time intimations that there' might be some tax which was not a direct tax nor included under the words 'duties, imposts, and excises,' such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue." [157 U. S. 557.]

And in the same connection the chief justice, delivering the opinion of the court in *Thomas v. United States*, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305, in speaking of the words "duties," "imposts," and "excises," said:

"We think that they were used comprehensively, to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are "taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges." Cooley, *Const. Lim.* 7th ed. 680.

The tax under consideration, as we have construed the statute, may be described as an excise upon the particular privilege of doing business in a corporate capacity, i. e., with the advan-

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tages which arise from corporate or quasi corporate organization; or, when applied to insurance companies, for doing the business of such companies. As was said in the Thomas Case, 192 U. S. supra, the requirement to pay such taxes involves the exercise of privileges, and the element of absolute and unavoidable demand is lacking. If business is not done in the manner described in the statute, no tax is payable.

If we are correct in holding that this is an excise tax, there is nothing in the Constitution requiring such taxes to be apportioned according to population. *Pacific Ins. Co. v. Soule*, 7 Wall. 433, 19 L. ed. 95; *Springer v. United States*, 102 U. S. 586, 26 L. ed. 253 ; *Spreckels Sugar Ref. Co. v. McClain*, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

It is next contended that the attempted taxation is void because it levies a tax upon the exclusive right of a state to grant corporate franchises, because it taxes franchises which are the creation of the state in its sovereign right and authority. This proposition is rested upon the implied limitation upon the powers of national and state governments to take action which encroaches upon or cripples the exercise of the exclusive power of sovereignty in the other. It has been held in a number of cases that the state cannot tax franchises created by the United States or the agencies or corporations which are created for the purpose of carrying out governmental functions of the United States. *M'CuUoch v. Maryland*, 4 Wheat. 316, 4 L. ed. 579 ; *Osborn v. Bank of United States*, 9 Wheat. 738, 6 L. ed. 204; *Union P. E. Co. v. Peniston*, 18 Wall. 5, 21 L. ed. 787 ; *California v. Central P. E. Co.* 127 U. S. 1, 32 L. ed. 150, 2 Inters. Com. Eep. 153, 8 Sup. Ct. Eep. 1073.

An examination of these cases will show that in each case where the tax was held invalid, the decision rested upon the proposition that the corporation was created to carry into effect powers conferred upon the Federal government in its sovereign capacity, and the attempted taxation was an interference with the effectual exercise of such powers.

In *Osborn v. Bank of United States*, supra, a leading case upon the subject, whilst it was held that the bank of the United States was not a private corporation, but a public one, created for national purposes, and therefore beyond the taxing power of the state. Chief Justice Marshall, in delivering the opinion of

the court, conceded that if the corporation had been originated for the management of an individual concern, with private trade and profit for its great end and principal object, it might be taxed by the state. Said the chief justice :

"If these premises [that the corporation was one of private character] were true, the conclusion drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the state, as any individual would be ; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs would no more exempt its private business from the operation of that power than it would exempt the private business of any individual employed in the same manner."

The inquiry in this connection is: How far do the implied limitations upon the taxing power of the United States over objects which would otherwise be legitimate subjects of Federal taxation, withdraw them from the reach of the Federal government in raising revenue, because they are pursued under franchises which are the creation of the states ?

In approaching this subject we must remember that enactments levying taxes, as other laws of the Federal government when acting within constitutional authority, are the supreme law of the land. The Constitution contains only two limitations on the right of Congress to levy excise taxes: they must be levied for the public welfare, and are required to be uniform throughout the United States. As Mr. Chief Justice Chase said, speaking for the court in License Tax Cases, 5 Wall. 462, 471, 18 L. ed. 497, 500: "Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject and may be exercised at discretion." The limitations to which the chief justice refers were the only ones imposed in the Constitution upon the taxing power.

In McCray v. United States, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561, this court sustained a Federal tax on oleomargarin, artificially colored, and held that while the 5th and 10th Amendments qualify, so far as applicable, all the provisions of the Constitution, nothing in

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those amendments operates to take away the power to tax conferred by the Constitution on the Congress. In that case it was contended that the subject taxed was within the exclusive domain of the states, and that the real purpose of Congress was not to raise revenue, but to tax out of existence a substance not harmful of itself and one which might be lawfully manufactured and sold ; but the only constitutional limitation which this court

conceded, in addition to the requirement of uniformity, and that for the sake of argument only so far as concerned the case then under consideration, was that Congress is restrained from arbitrary impositions or from exceeding its powers in seeking to effect unwarranted ends. The limitation of uniformity was deemed sufficient by those who framed and adopted the Constitution. The courts may not add others. *Patton v. Brady*, 184 U. S. 608, 622, 46 L. ed. 713, 720, 22 Sup. Ct. Rep. 493. And see *United States v. Singer*, 15 Wall. 111, 121, 21 L. ed. 49, 51 ; *Mcol V. Ames*, 173 U. S. 509, 515, 43 L. ed. 786, 791, 19 Sup. Ct. Rep. 522.

We must therefore enter upon the inquiry as to implied limitations upon the exercise of the Federal authority to tax because of the sovereignty of the states over matters within their exclusive jurisdiction, having in view the nature and extent of the power specifically conferred upon Congress by the Constitution of the United States. We must remember, too, that the revenues of the United States must be obtained in the same territory, from the same people, and excise taxes must be collected from the same activities, as are also reached by the states in order to support their local government.

While the tax in this case, as we have construed the statute, is imposed upon the exercise of the privilege of doing business in a corporate capacity, as such business is done under authority of state franchises, it becomes necessary to consider in this connection the right of the Federal government to tax the activities of private corporations which arise from the exercise of franchises granted by the state in creating and conferring powers upon such corporations. We think it is the result of the cases heretofore decided in this court, that such business activities, though exercised because of state created franchises, are not beyond the taxing power of the United States. Taxes upon

rights exercised under grants of state franchises were sustained *Foster Income Tax*. - 76.

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by this court in *Michigan C. E. Co. v. Collector* (*Michigan C. R. Co. V. Slack*) 100 U. S. 595, 25 L. ed. 647; *United States v. Erie R. Co.* 106 U. S. 327, 27 L. ed. 151, 1 Sup. Ct. Rep. 223 ; *Spreckels Sugar Eef. Co. v. McClain*, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376.

It is true that in those cases the question does not seem to have been directly made, but, in sustaining such taxation, the right of the Federal government to reach such agencies was necessarily involved. The question was raised and decided in the case of *Veazie Bank v. Fenno*, 8 "Wall. 533, 19 L. ed. 482. In that well-known case a tax upon the notes of a state bank issued for circulation was sustained. Mr. Chief Justice Chase, in the course of the opinion, said:

"Is it, then, a tax on a franchise granted by a state, which Congress, upon any principle exempting the reserved powers of the states from impairment by taxation, must be held to have no authority to lay and collect?

"We do not say that there may not be such a tax. It may be admitted that the reserved rights of the states, such as the right to pass laws, to give effect to laws through executive action, to administer justice through the courts, and to employ all necessary agencies for legitimate purposes of state government, are not proper subjects of the taxing power of Congress. But it cannot be admitted that franchises granted by a state are necessarily exempt from taxation ; for franchises are property, often very valuable and productive property ; and when not conferred for the purpose of giving effect to some reserved power of a state, seem to be as properly objects of taxation as any other property.

"But in the case before us the object of taxation is not the franchise of the bank, but property created, or contracts made and issued under the franchise, or power to issue bank bills. A railroad company, in the exercise of its corporate franchises, issues freight receipts, bills of lading, and passenger tickets ; and it cannot be doubted that the organization of railroads is quite as important to the state as the organization of banks. But it will hardly be questioned that these contracts of the company are objects of taxation within the powers of Congress, and not exempted by any relation to the state which granted the charter of the railroad. And it seems difficult to distinguish the tax-

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ation of notes issued for circulation from title taxation of these railroad contracts. Both descriptions of contracts are means of profit to the corporations which issue them; and both, as we think, may properly be made contributory to the public revenue." (pp. 547, 548).

It is true that the decision in the Veazie Bank Case was also placed, in a measure, upon the authority of the United States to control the circulating medium of the country, but the force of the reasoning which we have quoted has not been denied or departed from.

In *Thomas v. United States*, 192 U. S. 363, 48 L. ed. 481, 24 Sup. Ct. Eep. 305, a Federal tax on the transfer of corporate shares in state corporations was upheld as a tax upon business transacted in the exercise of privileges afforded by the state laws in respect to corporations.

In *Mcol V. Ames*, 173 U. S. 509, 43 L. ed. 786, 19 Sup-
Ct. Eep. 522, a Federal tax was sustained upon the enjoyment
of privileges afforded by a board of trade incorporated by the
state of Illinois.

When the Constitution was framed, the right to lay excise
taxes was broadly conferred upon the Congress. At that time
very few corporations existed. If the mere fact of state in-
corporation, extending now to nearly all branches of trade and
industry, could withdraw the legitimate objects of Federal taxa-
tion from the exercise of the power conferred, the result would
be to exclude the national government from many objects upon
which indirect taxes could be constitutionally imposed. Let it
be supposed that a group of individuals, as partners, were carry-
ing on a business upon which Congress concluded to lay an
excise tax. If it be true that the forming of a state corporation
would defeat this purpose, by taking the necessary steps re-
quired by the state law to create a corporation and carrying on
the business under rights granted by a state statute, the Federal
tax would become invalid and that source of national revenue
be destroyed, except as to the business in the hands of individ-
uals or partnerships. It cannot be supposed that it was in-
tended that it should be within the power of individuals acting
under state authority to thus impair and limit the exertion of
authority which may be essential to national existence.

In this connection *South Carolina v. United States*, 199' U.

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S. 437, 50 L. ed. 261, 26 Sup. Ct Eep. 110, 4 A. & E. Ann.
Cas. 737, is important. In that case it was held that the agents
of the state government, carrying on the business of selling
liquor under state authority, were liable to pay the internal
revenue tax imposed by the Federal government. In the opin-
ion previous cases in this court were reviewed, and the rule to
be deduced therefrom stated to be that the exemption of, state
agencies and instrumentalities from national taxation was lim-
ited to those of a strictly governmental character, and did not
extend to those used by the state in carrying on business of a
private character. 199 U. S. 461.

The cases unite in exempting from Federal taxation the
means and instrumentalities employed in carrying on the gov-
ernmental operations of the state. The exercise of such rights
as the establishment of a judiciary, the employment of officers
to administer and execute the laws, and similar governmental
functions, cannot be taxed by the Federal government. The
Collector v. Day (*Buffington v. Day*) 11 Wall. 113, 20 L. ed.
122 ; *United States v. Baltimore & O. R. Co.* 17 Wall. 322,
21 L. ed. 597; *Ambrisini v. United States*, 187 U. S. 1, 47
L. ed. 49, 23 Sup. Ct. Rep. 1, 12 Am. Crim. Rep. 699.

But this limitation has never been extended to the exclusion

of the activities of a merely private business from the Federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the states. We therefore reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a state in the creation of private corporations does not exempt it from the exercise of Federal authority to levy excise taxes upon such privileges.

But, it is insisted, this taxation is so unequal and arbitrary in the fact that it taxes a business when carried on by a corporation, and exempts a similar business when carried on by a partnership or private individual, as to place it beyond the authority conferred upon Congress. As we have seen, the only limitation upon the authority conferred is uniformity in laying the tax, and uniformity does not require the equal application of the tax to all persons or corporations who may come within its operation, but is limited to geographical uniformity throughout the United States. This subject was fully dis-

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cussed and set at rest in *Knowlton v. Moore*, 178 U. S. 41, 44 L. ed. 969, 20 Sup. Ct. Rep. 747, and we can add nothing to the discussion contained in that case.

In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another. For examples of such taxation see cases in the margin decided in this court, upholding the power. f

Many instances might be given where this court has sua-

Hylton v. United States, 3 Ball. 171, 1 L. ed. 556 (a tax on carriage* which the owner kept for private use) ; *Nicol v. Ames*, supra (a tax upon sales or exchanges of boards of trade) ; *Knowlton v. Moore*, supra (a tax on the transmission of property from the dead to the living) ; *Treat v. White*, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. Rep. 611 (a tax on agreements to sell shares of stock, denominated "calls" by stockbrokers) ; *Patton v. Brady*, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Rep. 493 (a tax on tobacco manufactured for consumption, and imposed at a period intermediate the commencement of manufacture and the final consumption of the article) ; *Cornell v. Coyne*, 192 U. S. 418, 48 L. ed. 504, - 24 Sup. Ct. Rep. 383

(a tax on "filled cheese" manufactured expressly for export) ; *McCray v. United States*, 195 U. S. 27, 49 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561 (a tax on oleomargarin not artificially colored, a higher tax

on oleomargarin artificially colored, and no tax on butter artificially colored) ; Thomas v. United States, supra (a tax on sales of shares of stock in corporations) ; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. ed. 95 (a tax upon the amounts insured, renewed, or continued by insurance companies, upon the gross amounts of premiums received and assessments made by them, and also upon dividends, undistributed sums, and incomes) ; Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 (a tax of 10 per centum on the amount of the notes paid out of any state bank, or state banking association) ; Scholey v. Rew, 23 Wall. 331, 23 L. ed. 99 (a tax on devolutions of title to real estate) ; Spreckels v. Sugar Ref. Co. 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct. Rep. 376 (a tax on the gross receipts of corporations and companies, in excess of \$250,000, engaged in refining sugar or oil) ; Michigan C. R. Co. v. Collector (Michigan C. R. Co. v. Slack) 100 U. S. 595, 25 L. ed. 647 (a tax laid in terms upon the amounts paid by certain public-service corporations as interest on their funded debt, or as dividends to their stockholders, and also on "all profits, incomes, or gains of such company, and all profits of such company carried to the account of any fund, or used for construction." Held to be a tax upon the company's earnings, and therefore essentially an excise upon the business of the corporations) ; Springer v. United States, 102 U. S. 586, 26 L. ed. 253 (a duty provided by the internal revenue acts to be assessed, collected, and paid upon gains, profits, and incomes, held to be an excise or duty, and not a direct tax).

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tained the right of a state to select subjects of taxation, although as to them the 14th Amendment imposes a limitation upon state legislatures, requiring that no person shall be denied the equal protection of the laws. See some of them noted in the margin.):

In Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533, dealing with the 14th Amendment, which in this respect imposes limitations only on state authority, this court said:

"The provision in the 14th Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner ; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are

JBeers v. Glynn, 211 U. S. 477, 53 L. ed. 290, 29 Sup. Ct. Rep. 186 (a state tax on personalty of nonresident decedents who owned realty in the state) ; New York ex rel. Hatch v. Reardon, 204 U. S. 152, 51 L. ed. 415,

27 Sup. Ct. Rep. 188, 9 A. & B. Ann. Cas. 736 (a state tax on the transfers of stock made within the state) ; Armour Packing Co. v. Lacy, 200 U. S. 226, 50 L. ed. 451, 26 Sup. Ct. Rep. 232 (a state license tax on meat-packing houses. A foreign corporation selling its products in the state, but whose packing establishments are not situated in the state, is not exempt from such license tax) ; Savannah, T. & I. of H. R. Co. v. Savannah, 198 U. S. 392, 49 L. ed. 1097, 25 Sup. Ct. Rep. 690 (a classification which distinguishes between an ordinary street railway and a steam railroad, making an extra charge for local deliveries of freight brought over its road from outside the city, held not to be such a classification as to make the tax void under the 14th Amendment) ; Cook v. Marshall County, 196 U. S. 261, 49 L. ed. 471, 25 Sup. Ct. Rep. 233 (a state tax on cigarette dealers) ; Magoun v. Illinois Trust & Sav. Bank, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594 (upholding the graded inheritance tax law of Illinois) ; Bell's Gap R. Co. V. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533 (state tax upon the nominal face value of bonds, instead of their actual value, held a valid part of the state system of taxation).

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within the discretion of the state legislature, or the people of the state in framing their Constitution."

It is insisted in some of the briefs assailing the validity of this tax that these cases have been modified by Southern E. Co. V, Greene, 216 U. S. 400, 54 L. ed. 536, 30 Sup. Ct. Rep. 287, 17 A. & E. Ann. Cas. 1247. In that case a corporation organized in a state other than Alabama came into that state in compliance with its laws, paid the license tax and property tax imposed upon other corporations doing business in the state, and acquired, under direct sanction of the laws of the state, a large amount of property therein, and when it was attempted to subject it to a further tax, on the ground that it was for the privilege of doing business as a foreign corporation, when the same tax was not imposed upon state corporations doing precisely the same business, in the same way, it was held that the attempted taxation was merely arbitrary classification, and void imder the 14th Amendment. In that case the foreign corporation was doing business under the sanction of the state laws no less than the local corporation; it had acquired its property under sanction of those laws; it had paid all direct and indirect taxes levied against it, and there was no practical distinction between it and a state corporation doing the same business in the same way.

In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there

is no substantial difference between the carrying on of business by the corporations taxed, and the same business when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the

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advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals.

It is further contended that some of the corporations, notably insurance companies, have large investments in municipal bonds and other nontaxable securities, and in real estate and personal property not used in the business; that therefore the selection of the measure of the income from all sources is void, because it reaches property which is not the subject of taxation, — upon the authority of the Pollock Case, *supra*. But this argument confuses the measure of the tax upon the privilege with direct taxation of the state or thing taxed. In the Pollock Case, as we have seen, the tax was held unconstitutional because it was in effect a direct tax on the property solely because of its ownership.

Nor does the adoption of this measure of the amount of the tax do violence to the rule laid down in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U. S. 217, 52 L. ed. 1031, 28 Sup. Ct. Eep. 638, nor the *Western T. J. Teleg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Eep. 190. In the *Galveston Case* it was held that a tax imposed by the state of Texas, equal to 1 per cent upon the gross receipts "from every source whatever" of lines of railroad lying wholly within the state, was invalid as an attempt to tax gross receipts derived from the carriage of passengers and freight in interstate commerce, which in some instances was much the larger part of the gross receipts taxed. This court held that this act was an attempt to burden commerce among the states, and the fact that it was declared to be "equal to" 1 per cent made no difference, as it was merely an effort to reach gross receipts by a tax not even disguised as an occupation tax, and in nowise helped by the words "equal to." In other words, the tax was held void, as its substance

and manifest intent was to tax interstate commerce as such.

In the Western Union Telegraph Cases the state undertook to levy a graded charter fee upon the entire capital stock of one

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hundred millions of dollars of the Western Union Telegraph Company, a foreign corporation, and engaged in commerce among the states, as a condition of doing local business within the state of Kansas. This court held, looking through form and reaching the substance of the thing, that the tax thus imposed was in reality a tax upon the right to do interstate commerce within the state, and an undertaking to tax property beyond the limits of the state ; that whatever the declared purpose, when reasonably interpreted, the necessary operation and effect of the act in question was to burden interstate commerce and to tax property beyond the jurisdiction of the state, and it was therefore invalid.

There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which hold that where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the state or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property.

In Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Eep. 593, a tax was sustained upon the right or privilege of the Home Insurance Company to be a corporation, and to do business within the state in a corporate capacity, the tax being measured by the extent of the dividends of the corporation in the current year upon the capital stock. Although a very large amount, nearly two of three millions of capital stock, was invested in bonds of the United States, expressly exempted from taxation by a statute of the United States, the tax was sustained as a mode of measurement of a privilege tax which it was within the lawful authority of the state to impose. Mr. Justice Field, who delivered the opinion of the court, reviewed the previous cases in this court, holding that the state could not tax or burden the operation of the Constitution and of laws enacted by the Congress to carry into execution the powers vested in the general government. Yielding full assent to those cases, Mr. Justice Field said of the tax then under consideration: "It is not a tax in terms upon the capital stock of the company, nor upon any bonds of the United

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States composing a part of that stock. The statute designates

it a tax upon the 'corporate franchise or business' of the company, and reference is only made to its capital stock and dividends for the purpose of determining the amount of the tax to be exacted each year." In that case, in the course of the opinion, previous cases of this court were cited, v[^]ith approval. *Society for Savings v. Coite*, 6 Wall. 594, 18 L. ed. 897 ; *Provident Inst. V. Massachusetts*, 6 Wall. 611, 18 L. ed. 907.

In the *Coite Case* a privilege tax upon the total amount of deposits in a savings bank was sustained, although \$500,000 of the deposits had been invested in securities of the United States, and declared by act of Congress to be exempt from taxation by state authority. In that case the court said: "Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood, may be taxed by a state for the support of the state government. Authority to that effect resides in the state independent of the Federal government, and is wholly unaffected by the fact that the corporation or individual has or has not made investment in Federal securities." In *Provident Inst. v. Massachusetts*, supra, a like tax was sustained.

It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is formed in the income produced in part from property which of itself considered is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. See, in this connection, *Maine v. Grand Trunk R. Co.* 142 U. S. 217, 35 L. ed. 994, 3 Inters. Com. Rep. 807, 12 Sup. Ct. Rep. 121, 163, as interpreted in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U. S. 217, 226, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638.

It is contended that measurement of the tax by the net income of the corporation or company received by it from all sources is not only unequal, but so arbitrary and baseless as to,

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fall outside of the authority of the taxing power. But is this so ? Conceding the power of Congress to tax the business activities of private corporations, including, as in this case, the privilege of carrying on business in a corporate capacity, the tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital ; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the

measure of income from all sources does. Nor can it be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods ; it may give a standing which shall facilitate purchases; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige.

It is true that in the Spreckels Case, 192 T.J. S. supra, the excise tax, for the privilege of doing business, was based upon the business assets in use by the company, but this was because of the express terms of the statute which thus limited the measure of the excise. The statute now under consideration bears internal evidence that its draftsman had in mind language used in the opinion in the Spreckels Case, and the measure of taxation, the income from all sources, was doubtless inserted to prevent the limitation of the measurement of the tax to the income from business assets alone. There is no rule which permits a court to say that the measure of a tax for the privilege of doing business, where income from property is the basis, must be limited to that derived from property which may be strictly said to be actively used in the business. Departures from that rule, sustained in this court, are not wanting. In *United States v. Singer*, 15 Wall. Ill, 21 L. ed. 49, an excise tax was sustained upon the liquor business, which was fixed by the payment of an amount not less than 80 per cent of the total capacity of the distillery. Whether such capacity was used in the business was a matter of indifference, and this court said of such a measure :

"Everyone is advised in advance of the amount he will be

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required to pay if he enters into the business of distilling spirits, and every distiller must know the producing capacity of his distillery. If he fail under these circumstances to produce the amount for which, by the law, he will in any event be taxed if he undertakes to distill at all, he is not entitled to much consideration."

In *Society for Savings v. Coite*, 6 Wall, supra, and *Provident Inst. V. Massachusetts*, 6 Wall, supra, as we have seen^ the amount of excise was measured by the amount of bank deposits. It made no difference that the deposits were not used actively in the business.

In *Hamilton Mfg. Co. v. Massachusetts*, 6 Wall. 632, .18 L. ed. 904, the tax was measured by the excess of the market value of the corporation's capital stock above the value of its real estate and machinery, and in this connection see *Home Ins. Co. V. New York*, 134 T.J. S. supra, where the excise was computed upon the entire capital stock, measured by the extent of the dividends thereon.

We must not forget that the right to select the measure and objects of taxation devolves upon the Congress, and not upon the courts, and such selections are valid unless constitutional limitations are overstepped. "It is no part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount or the property upon which it is imposed." *Patton v. Brady*, 184 U. S. 608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493 ; *McCray v. United States*, 195 U. S. 27, 58, 49 L. ed. 78, 96, 24 Sup. Ct. Eep. 769, 1 A. & E. Ann. Cas. 561, and previous cases in this court there cited.

Nor is that line of cases applicable, such as *Brown v. Maryland*, 12 Wheat. 419, 6 L. ed. 678, holding that a tax on the sales of an importer is a tax on the import, and *Cook v. Pennsylvania*, 97 U. S. 566, 24 L. ed. 1015, holding a tax on auctioneers' sales of goods in original packages a tax on imports. In these cases the tax was held invalid, as the state thereby taxed subjects of taxation within the exclusive power of Congress.

What we have said as to the power of Congress to lay this excise tax disposes of the contention that the act is void, as lacking in due process of law.

It is urged that this power can be so exercised by Congress

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as to practically destroy the right of the states to create corporations, and for that reason it ought not to be sustained, and reference is made to the declaration of Chief Justice Marshall in *M'Culloch v. Maryland*, that the power to tax involves the power to destroy. This argument has not been infrequently addressed to this court with respect to the exercise of the powers of Congress. Of such contention this court said in *Knowlton v. Moore*, 188 U. S. 60, 44 L. ed. 977, 20 Sup. Ct. Rep. 755 :

"This principle is pertinent only when there is no power to tax a particular subject, and has no relation to a case where such right exists. In other words, the power to destroy, which may be the consequence of taxation, is a reason why the right to tax should be confined to subjects which may be lawfully embraced therein, even although it happens that in some particular instance no great harm may be caused by the exercise of the taxing authority as to a subject which is beyond its scope. But this reasoning has no application to a lawful tax, for if it had, there would be an end of all taxation; that is to say, if a lawful tax can be defeated because the power which

is manifested by its imposition may, when further exercised, be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied."

In *Veazie Bank v. Fenno*, 8 Wall. 533, 19 L. ed. 482, *supra*, speaking for the court, the chief justice said :

"It is insisted, however, that the tax in the case before us is excessive, and so excessive as to indicate a purpose on the part of Congress to destroy the franchise of the bank, and is therefore beyond the constitutional power of Congress.

"The first answer to this is that the judicial cannot prescribe to the legislative departments of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. So, if a particular tax bears heavily upon a corporation, or a class of corporations, it cannot, for that reason only, be pronounced contrary to the Constitution."

So the same effect; *McCray v. United States*, 195 U. S. 27,

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4r9 L. ed. 78, 24 Sup. Ct. Rep. 769, 1 A. & E. Ann. Cas. 561. In the latter case it was said :

"No instance is afforded from the foundation of the government where an act which was within a power conferred was declared to be repugnant to the Constitution because it appeared to the judicial mind that the particular exertion of constitutional power was either unwise or unjust."

And in the same case this court said, after reviewing the previous cases in this court:

"Since, as pointed out in all the decisions referred to, the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow, if a tax be within the lawful power, the exertion of that power may not be judicially restrained because of the results to arise from its exercise."

The argument, at last, comes to this: That because of possible results, a power lawfully exercised may work disastrously, therefore the courts must interfere to prevent its exercise, because of the consequences feared. No such authority has ever been invested in any court. The remedy for such wrongs, if such in fact exist, is in the ability of the people to choose their own representatives, and not in the exertion of unwarranted powers by courts of justice.

It is especially objected that certain of the corporations whose stockholders challenge the validity of the tax are so-called real estate companies, whose business is principally the holding and management of real estate. These cases are No. 415, Cedar Street Company v. Park Realty Company ; ISTo. 431, Percy H. Brundage v. Broadway Eealty Company ; No. 443, Phillips v. Fifty Associates et al. ; No. 446, Mitchell v. Clark Iron Company ; No. 412, William H. Miner v. Corn Exchange Bank et al. ; and No. 457, Cook et al. v. Boston Wharf Company.

In No. 412, Miner v. Corn Exchange Bank et al., the bank occupies a building in part and rents a large part to tenants.

Of the realty companies, the Park Eealty Company was organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate ; to lease, exchange, hire, or otherwise acquire property ; to erect, alter, or improve buildings ; to conduct, operate, manage, or lease hotels, apartment houses, etc. ; to make and carry out contracts in the manner specified concerning

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buildings . . . and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc.

At the time the bill was filed the business of the company related to the Hotel Leonori, and the bill averred that it was engaged in no other business except the management and leasing of that hotel.

The Broadway Realty Company was formed for the purpose of owning, holding, and managing real estate. It owns an office building and certain securities. The office building is let to tenants, to whom light and heat are furnished, and for whom janitor and similar service are performed.

The Fifty Associates are operating under a charter to own real estate, with power to build, improve, alter, pull down, and rebuild, and to manage, exchange and dispose of the same.

The Clark Iron Company was organized under the Jaws of Minnesota, owns and leases ore lands for the purpose of carrying on mining operations, and receives a royalty depending upon the quantity of ore mined.

The Boston Wharf Company is operating under a charter authorizing it to acquire lands and flats, with their privileges and appurtenances, and to lease, manage, and improve its property

in whatever manner shall be deemed expedient by it, and to receive dockage and wharfage for vessels laid at its wharfs.

What we have said as to the character of the corporation tax as an excise disposes of the contention that it is direct, and therefore requiring apportionment by the Constitution. It remains to consider whether these corporations are engaged in business. "Business" is a very comprehensive term and embraces everything about which a person can be employed. Black's Law Diet. 158, citing *People ex rel. Hoyt v. Tax Comrs.* 23 N. Y. 242, 244. "That which occupies the time, attention, and labor of men for the purpose of a livelihood or profit." 1 Bouvier's Law Diet. p. 273.

We think it is clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the

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meaning of this statute, and in the capacity necessary to make such organizations subject to the law.

Of the *Motor Taximeter Cab Company Case*, No. 432, the company owns and leases taxicabs, and collects rents therefrom. We think it is also doing business within the meaning of the statute.

What we have already said disposes of the objections made in certain cases of life insurance and trust companies, and banks, as to income derived from United States, state, municipal, or other nontaxable bonds.

We come to the question, Is a so-called public-service corporation, such as the Coney Island and Brooklyn Railroad Company, in case No. 409, and the Interborough Rapid Transit Company, No. 442, exempted from the operation of this statute? In the case of *South Carolina v. United States*, 199 U. S. 437, 50 L. ed. 261, 26 Sup. Ct. Rep. 110, 4 A. & E. Ann. Cas. 737, this court held that when a state, acting within its lawful authority, undertook to carry on the liquor business, it did not withdraw the agencies of the state, carrying on the traffic, from the operation of the internal revenue laws of the United States. If a state may not thus withdraw from the operation of a Federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is, nevertheless, with a view to private profit, can have the effect of denying the Federal right to reach such properties and activities for the purposes of revenue.

It is no part of the essential governmental functions of a

state to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation they stand upon the same footing as other private corporations upon which special franchises have been conferred.

The true distinction is between the attempted taxation of those operations of the states essential to the execution of its governmental functions, and which the state can only do itself.

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and those activities which are of a private character. The former, the United States may not interfere with by taxing the agencies of the state in carrying out its purposes; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate Federal taxation.

Applying this principle, we are of opinion that the so-called public-service corporations represented in the cases at bar are not exempt from the tax in question. *Union P. E. Co. v. Peniston*, 18 Wall. 5, 33, 21 L. ed. 787, 792.

It is again objected that incomes under \$5,000 are exempted from the tax. It is only necessary, in this connection, to refer to *Knowlton v. Moore*, 178 U. S. supra, in which a tax upon inheritances in excess of \$10,000 was sustained. In *Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594, a graded inheritance tax was sustained.

As to the objections that certain organizations, — labor, agricultural, and horticultural, — fraternal and benevolent societies, loan and building associations, and those for religious, charitable, or educational purposes, are excepted from the operation of the law, we find nothing in them to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed must be included the right to make exemptions such as are found in this act.

Again, it is urged that Congress exceeded its power in permitting a deduction to be made of interest payments only in case of interest paid by banks and trust companies on deposits, and interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of the corporation or company. This provision may have been inserted with a

view to prevent corporations from issuing a large amount of bonds in excess of the paid-up capital stock, and thereby, distributing profits so as to avoid the tax. In any event, we see no reason why this method of ascertaining the deductions allowed should invalidate the act. Such details are not wholly Foster Income Tax. - 77.

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arbitrary, and were deemed essential to practical operation. Courts cannot substitute their judgment for that of the legislature. In such matters a wide range of discretion is allowed.

The argument that different corporations are so differently circumstanced in different states, and the operation of the law so unequal as to destroy it, is so fully met in the opinion in *Ejaowlton v. Moore*, 178 U. S. supra, that it is only necessary to make reference thereto. For this purpose the law operates uniformly, geographically considered, throughout the United States, and in the same way wherever the subject-matter is found. A liquor tax is not rendered unlawful as a revenue measure because it may yield nothing in those states which have prohibited the liquor traffic. JSTo more is the present law unconstitutional because of inequality of operation owing to differ[^]ent local conditions.

J[^]or is the special objection tenable, made in some of the cases, that the corporations act as trustees, guardians, etc., under the authority of the laws or courts of the state. Such trustees are not the agents of the state government in a sense which exempts them from taxation because executing the necessary governmental powers of the state. The trustees receive their compensation from the interests served, and not from the public revenues of the state.

It is urged in a number of the cases that in a certain feature of the statute there is a violation of the 4th Amendment of the Constitution, protesting against unreasonable searches and seizures. This amendment was adopted to protect against abuses in judicial procedure under the guise of law, which invade the privacy of persons in their homes, papers, and effects, and applies to criminal prosecutions and suits for penalties and forfeitures under the revenue laws. *Boyd v. United States*, 116 U. S. 632, 29 L. ed. 511, 6 Sup. Ct. Rep. 524. It does not prevent the issue of search warrants for the seizure of gambling paraphernalia and other illegal matter. *Adams v. New York*, 192 U. S. 585, 48 L. ed. 575, 24 Sup. Ct. Rep. 372. It does not prevent the issuing of process to require attendance and testimony of witnesses, the production of books and papers, etc. *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 38 L. ed. 1047, 4 Inters. Com. Rep. 545, 14 Sup. Ct. Rep. 1125 ; *Interstate Commerce Commission v. Baird*, 194 U. S.

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25, 48 L. ed. 860, 24 Sup. Ct. Rep. 563. Certainly the amendment was not intended to prevent the ordinary procedure in use in many, perhaps most, of the states, of requiring tax returns to be made, often under oath. The objection in this connection applies, when the substance of the argument is reached, to the 6th subsection of § 38 of the act, which provides:

"Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue, and shall constitute public records, and be open to inspection as such." [36 Stat., at L. 116, chap. 6, U. S. Comp. Stat. Supp. 1909, p. 849.]

) An amendment was made June 17, 1910, which reads as follows :

"For classifying, indexing, exhibiting, and properly caring for the returns of all corporations, required by section thirty-eight of an act entitled, 'An act to Provide Revenue, Equalize Duties, Encourage the Industries of the United States, and for Other Purposes,' approved August fifth, nineteen hundred and nine, including, the employment in the District of Columbia of such clerical and other personal services and for rent of such quarters as may be necessary, twenty-five thousand dollars : Provided, That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President." [36 Stat., at L. 494, chap. 297.]

The contention is that the above section as originally framed and as now amended could have no legitimate connection with the collection of the tax, and in substance amounts to no more than an unlawful attempt to exhibit the private affairs of corporations to public or private inspection, without any substantial connection with or legitimate purpose to be subserved in the collection of the tax under the act now under consideration. But we cannot agree to this contention. The taxation being, as we have held, within the legitimate powers of Congress, it is for that body to determine what means are appropriate and adapted to the purpose of making the law effectual. In this connection the often-quoted declaration of Chief Justice Marshall in *M'CuUoch v. Maryland*, 4 Wheat. 316, 421, 4 L. ed.

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379, 605, is appropriate : "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

Congress may have deemed the public inspection of such returns a means of more properly securing the fullness and accuracy thereof. In many of the states laws are to be found making tax returns public documents, and open to inspection, f

We cannot say that this feature of the law does violence to the constitutional protection of the 4th Amendment, and, this is equally true of the 5th Amendment, protecting persons against compulsory self-incriminating testimony. No question under the latter Amendment properly arises in these cases, and when circumstances are presented which invoke the protection of that Amendment, and raise questions involving rights thereby secured, it will be time enough to decide them. And so of the argument that the penalties for the nonpayment of the taxes are so high as to violate the Constitution. No case is presented involving that question, and, moreover, the penalties are clearly a separate part of the act, and whether collectible or not may be determined in a case involving an attempt to enforce them. *Willcox v. Consolidated Gas Co.* 212 U. S. 19, 53, 53 L. ed. 382, 400, 29 Sup. Ct. Rep. 192, 15 A. & E. Ann. Cas. 1034.

In Connecticut, the requirement is that the tax lists of the assessors shall be abstracted and lodged in the town clerk's office "for public inspection." Rev. Stat. (Conn.) § 2310. In New York, notices of the completion of the assessment rolls must be conspicuously posted in three or more public places, and a copy left in a specified place, "where it may be seen and examined by any person until the third Tuesday of August next following." Consol. Laws of N. Y. vol. 5, p. 5859; N. Y. Laws 1909, chap. 62, § 36. In Maryland, a record of property assessed is required to be kept, and the valuation thereof, with alphabetical list of owners, recorded in a book, "which any person may inspect without fee or reward." Pub. Laws (Md.) vol. 2, p. 1804, § 23. In Pennsylvania, it is provided that from the time of publishing the assessor's returns until the day appointed for finally determining whether the assessor's valuations are too low, "any taxable inhabitant of the county shall have the right to examine the said return in the commissioner's office." Pepper & L. Dig. Laws (Pa.) vol. 2, p. 4591, § 357. In Hampshire, the list of taxes assessed are required to be kept in a book, and also left with the town clerk, and such records "shall be open to the inspection of all persons." Pub. Stat. (N. H.) 1901, p. 214, § 5.

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It has been suggested that there is a lack of power to tax foreign corporations, doing local business in a state, in the manner proposed in this act, and that the tax upon such corporations, being unconstitutional, works such inequality against domestic corporations as to invalidate the law. It is sufficient to say of this that no such case is presented in the record. *Southern E. Co. v. King*, 217 U. S. 525, 54 L. ed. 868, 30 Sup. Ct. Rep. 594. This is equally true as to the alleged invalidity of the act as a tax on exports, which is beyond the power of Congress. No such case is presented in those now before the court.

We have noticed such objections as are made to the consti"

tutionality of this law as it is deemed necessary to consider..
Finding the statute to be within the constitutional power of the
Congress, it follows that the judgments in the several cases must
be affirmed.

Affirmed.

UNITED STATES SUPREME COURT.

AMOEY ELIOT, Appt., v. JAMES G. EEEEMAIST, Eobert:
A. Boit, Nathanael Thayer, and Eobert H. Gardner. (No^
448.)

MAINE BAPTIST MISSIONAERY CONVENTIOlSr, Appt.,.
V. CHAELES E. COTTING, and Charles F. Adams, 2d,.
Trustees, etc. (No. 496.)

[220 U. S. 178, 55 L. ed. 424.]

Internal revenue - Federal corporation tax - applicability to real*
estate trusts.

Real estate trusts created by deed for the purchasing, improving,,
holding, or selling lands and buildings for the benefit of the sharehold--
ers, which do not derive any benefit from, and are not organized under,,
any statute of the state, and which, by their terms, end with lives in.
being and twenty years thereafter, are not subject to the excise im-
posed by the act of August 5, 1909 (36 Stat, at L. II, 112-117, chap.
6, U. S. Comp. Stat. Supp. 1909, pp. 659, 844-849) § 38, upon the do-
ing of business by corporations, joint stock companies, or associations

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"now or hereafter organized under the laws of the United States or of
any state or territory."

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[Nos. 448 and 496.]

Argued January 19, 1911. Decided March 13, 1911.

Two appeals from the Circuit Court of the United States for
the District of Massachusetts to review decrees sustaining de-
murrers to and dismissing bills filed by cestuis que trust to en-
join the trustees from compliance with the Federal corporation
tax. Reversed.

The facts are stated in the opinion.

Mr. Moorfield Storey argued the cause, and, with Messrs. Richard W. Hale and Frank W. Grinnell, filed a brief for appellant in No. 448 :

The respondents are not carrying on or doing business.

Pollock V. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673 ; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912; Smith V. Anderson, L. R. 15 Ch. Div. 276, 50 L. J. Ch. K S. 39, 43 L. T.]Sr. S. 329, 29 Week. Rep. 21.

There is no joint stock company or association.

Smith V. Anderson, supra.

The trust was not organized for profit. Reg. v. Whitmarsh, 15 Q. B. 618 ; Bear v. Bromley, 18 Q. B. 276, 21 L. J. Q. B. N. S. 354, 16 Jur. 450, 7 Eng. R. & C. Cas. 507; Moore v. Rawlins, 6 C. B. N. S. 315, 28 L. J. O. P. N. S. 247, 5 Jur. W. S. 941 ; Smith v. Anderson, L. R. 15 Ch. Div. 273, 50 L. J. Ch. K S. 39, 43 L. T. N. S. 329, 29 Week. Rep. 21.

The defendants have not a capital stock represented by shares within the meaning of the act.

28 Ops. Atty. Gen. p. 194, Feb. 14th 1910 ; Mayo v. Moritz, 151 Mass. 481, 24 W. E. 1083 ; Howe v. Morse, 174 Mass. 502, 55 K E. 213 ; Phillips v. Blatchford, 137 Mass. 510 ; Gleason V. McKay, 134 Mass. 419 ; Opinion of Justices, 196 Mass. 603, 85 N. E. 545.

The defendants are not organized under the laws of Massachusetts. The unwritten law is never correctly spoken of in the plural.

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Swift V. Tyson, 16 Pet. 1, 18, 10 L. ed. 865, 8Y1 ; Baltimore & O. K. Co. V. Baugh, 149 U. S. 369, 371, 37 L. ed. 772, 774, 13 Sup. Ct. Eep. 914.

The expression, "organized under the laws of," plainly refers to an organization under some statute law authorizing such organization. There have been such statutes in New York and other places, as appears in Taft v. Ward, 106 Mass. 522, and the act undoubtedly refers to companies organized under laws of that kind.

Edwards v. Warren Linoline & Gasoline Works, 168 Mass. 564, 38 L.E.A. 791, 47 E". E. 502 ; Oliver v. Liverpool & L. Life & E. Ins. Co. 100 Mass. 531, 10 Wall. 566, 19 L. ed. 1029 ; People ex rel. Piatt v. Wemple, 117 Y. Y. 136, 6 L.R.A. 303, 2 Inters. Com. Eep. 735, 22 IST. E. 1046 ; Gregg v. Sanford, 12 O. C. A. 525, 28 U. S. App. 313, 65 Fed. 151.

Where the construction of a tax is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid.

Spreckels Sugar Eef. Co. v. McClain, 51 C. C. A. 201, 113 Fed. 247, 192 U. S. 397, 416, 48 L. ed. 496, 503, 24 Sup. Ct Eep. 376.

A statute will not be construed so as to violate the Constitution, unless its language imperatively demands it.

Knights Templars' & M. Life Indemnity Co. v. Jarman, 187 U. S. 197, 205, 47 L. ed. 139, 145, 23 Sup. Ct. Eep. 108; United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U. S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Eep. 527.

This court has decided that a tax on the income is a tax •on the land, and therefore a direct tax, which must be levied according to the rule of apportionment.

Pollock v. Farmers' Loan & T. Co. 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673 ; Pollock v. Farmers' Loan & T. Co. 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct Eep. 912; Knowlton v. Moore, 178 U. S. 82, 44 L. ed. 986, 20 Sup. Ct Eep, 747.

But even if the tax is treated as an excise tax, it cannot be sustained.

United States v. Singer, 15 Wall. Ill, 121, 21 L. ed. 49, 51 ; Eoup's Case, 81 *Pa. 211 ; Cooley, Const Lim. pp. 695, 697 ; People ex rel. Detroit & H. E. Co. v. Salem, 20 Mich. 473, 4 Am. Eep. 400; Portland Bank v. Apthorp, 12 Mass. 258;

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Southern R. Co. v. Greene, 216 U. S. 400, 417, 54 L. ed. 536, 541, 30 Sup. Ct. Eep. 287, 17 A. & E. Ann. Gas. 1247 ; Gulf, C. & S. F. R. Co. V. Ellis, 165 U. S. 150, 155, 165, 41 L. ed. 666, 668, 671, 17 Sup. Ct. Eep. 255 : Chicago, M. & St. P. E. Co. V. Westby, - L.E.A.(N.S.) - , 102 C. C. A. 65, 178 Fed. 624.

Mr. Burton E. Eames argued the cause, and, with Messrs. Charles H. Tyler, Owen D. Young, and Clement F. Robinson, filed a brief for appellant in No. 496 :

All tax laws should be construed strictly.

Sutherland Stat. Const. 2d ed. §§ 536, 537; Cooley, Taxn. pp. 453 et seq. ; United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690 ; Benziger v. United States, 192 U. S. 38, 48 L. ed. 331, 24 Sup. Ct. Eep. 189 ; Sewall v. Jones, 9 Pick. 412; Spreckels Sugar Eef. Co. v. McClain, 192 U. S. 397, 416, 48 L. ed. 496, 503, 24 Sup. Ct. Eep. 376.

The department store trust is not "organized under the laws." The word "laws" should be held to include only statute laws, and not the general body of the common law.

Brinckerhoff v. Bostwick, 99 N. Y. 185, 1 N. E. 663 ; State ex rel. Clapp v. Sioux City & N. E. Co. 43 Minn. 17, 44 K W. 1032.

The natural meaning of the word "organized" connotes an idea of creating an entity, if it does not connote actual incorporation.

Dodge V. Williams, 46 Wis. 70, 1 N. W. 92, 50 N. W. 1103.

It seems to be an unusual use of a term, to call the department store trust "organized." A corporation is "organized." A trust is "made," "declared," "created," or "entered into," but hardly "organized."

Hinds V. Marmolejo, 60 Cal. 231 ; Daggs v. Phoenix Nat. Bank, 5 Ariz. 409, 53 Pac. 201 ; Lindsay & P. Co. v. Mullen, 176 U. S. 126, 44 L. ed. 400, 20 Sup. Ct. Rep. 325.

If we take the expression "joint stock company or association organized under the laws" to mean a joint stock company or association organized under and by virtue of certain statutes and deriving certain special privileges therefrom, we describe a form of organization which has a real existence in this country, and is radically different from the department store trust.

Lyon v. Denison, 80 Mich. 371, 8 L.E.A. 358, 45 N. W.

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358 ; Hussey v. Arnold, 185 Mass. 202, 10 N, E. 87 ; Atty. Gen. V. Mercantile M. Ins. Co. 121 Mass. 524 ; Cook, Corp. § 505 ; Andrews Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 293. 58 U. S. App. 444, 86 I'^ed. 585.

There is no intermediate form in Massachusetts between a corporation and a partnership, although a joint stock company may exist under the common law of that state solely as a partnership.

Phillips V. Blatchford, 137 Mass. 510; Ricker v. American Loan & T. Co. 140 Mass. 346, 5 IST. E. 284.

In court proceedings these organizations are generally treated

as corporations in so far that, by virtue of the statutes, actions may be brought by or against them in their association names.

Oak Ridge Coal Co. v. Rogers, 108 Pa. 147; Westcott v. Fargo, 61 IST. Y. 542, 19 Am. Rep. 300; Saltsman v. Shults, 14 Hun, 256; Van Aernam v. Bleistein, 102 K Y. 355, 7 IST. E. 537; Hibbs v. Brown, 112 App. Div. 214, 98 N. Y. Supp. 353, 190 N. Y. 167, 82 N. E. 1108; Piatt v. Colvin, 50 Ohio St. 703, 36]Sr. E. 735 ; Adams Exp. Co. v. State, 55 Ohio St. 69, 44 ISr. E. 506 ; Edgeworth v. Wood, 58 N. J. L. 463, 33 Atl. 940 ; Boatner v. American Exp. Co. 122 Fed. 714 ; Adams Exp. Co. V. Schofield, 111 Ky. 832, 64 S. W. 903.

In the Federal courts formerly these organizations were treated jurisdictionally as corporations (Andrews Bros. Co. v. Youngstown Coke Co. 30 C. C. A. 293, 58 TJ. S. App. 444, 86 Fed. 585) ; but since the case of Great Southern Fire Proof Hotel Co. V. Jones, 177 U. S. 449, 44 L. ed. 842, 20 Sup. Ct Rep. 690, the contrary has been held.

See also Saunders v. Adams Exp. Co. 136 Fed. 494; Fred Macey Co. v. Macey, 68 C. C. A. 363, 135 Fed. 725; Taylor v. Weir, 96 C. C. A. 438, 171 Fed. 636; Chapman v. Barney, 129 U. S. 677, 32 L. ed. 809, 9 Sup. Ct. Rep. 426.

In Massachusetts the courts have never allowed the joint stock companies of other states to be treated as entities in court proceedings.

Taft V. Ward, 106 Mass. 518; Bodwell v. Eastman, 106 Mass. 525 ; Gott v. Dinsmore, 111 Mass. 45 ; Boston & A. R. Co. V. Pearson, 128 Mass. 445 ; Edwards v. Warren Linoline & Gasoline Works, 168 Mass. 564, 38 L.R.A. 791, 47 N. E. 502.

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In the case of statutory joint stock companies, the law sometimes permits title to be taken in the name of the association, which may even have a seal for use on deeds of the property.

Eliot V. Himrod, 108 Pa. 569 ; Briar Hill Coal & I. Co. v. Atlas Works, 146 Pa. 290, 23 Atl. 326 ; Kountz's Appeal, 204 Pa. 432, 54 Atl. 316.

A member of a Pennsylvania joint stock company (like the stockholder of a corporation) would not be liable individually for the torts of the managers of the association, unless he should personally participate.

Whitney v. Backus, 149 Pa. 29, 24 Atl. 51 ; Hill v. Stetler, 127 Pa. 162, 13 Atl. 306, 17 Atl. 887.

An express company organized under the laws of New York as a joint stock company is sufficiently a corporation to sustain an indictment for the embezzlement of its funds as of the funds

of a "corporation."

Kossakowski v. People, 177 HI. 563, 53 JST. E. 115.

Under the decisions of New York and Pennsylvania, in order to include these statutory joint stock companies and associations with corporations in a tax act, they must be mentioned in terms.

Hoey V. Coleman, 46 Fed. 221 ; People ex rel. Winchester v. Coleman, 133 N. Y. 279, 16 L.E.A. 183, 31 IST. E. 96 ; People «x rel. Piatt v. Wemple, 117 N. Y. 136, 6 L.E.A. 303, 2 Inters. Com. Eep. 735, 22 N. E. 1046; Sanford v. Gregg, 58 Fed. •620, 12 C. C. A. 525, 28 U. S. App. 313, 65 Fed. 151.

No tax is laid upon these trusts in Massachusetts, except the ordinary tax upon the property. This property is taxed to the trustees, like the property of any other trust. The beneficiaries have a purely equitable interest in the property, and no tax is laid upon their interest.

Hussey v. Arnold, 185 Mass. 202, 70 N. E. 87; Kinney v. Treasurer & Eeceiver General, 207 Mass. 368, - L.E.A. (KS.) - , 93 N. E. 586.

It is to be noted, however, that, in one case originating in Massachusetts, statutory joint stock companies were treated as ■corporations for the purpose of taxation.

Oliver v. Liverpool & L. Life & F. Ins. Co. 100 Mass. 531, 10 Wall. 566, 19 L. ed. 1029.

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Perhaps the most important statutory privilege given in certain states to the statutory joint stock company is the privilege •of limited liability.

Oak Eidge Coal Co. v. Eogers, 108 Pa. 147 ; Stevens v. Philadelphia Ball Club, 142 Pa. 52, 11 L.K.A. 860, 21 Atl. 797; Staver & A. Mfg. Co. v. Blake, 111 Mich. 282, 38 L.E.A. 798, 69 ISr. W. 508.

Statutory joint stock companies possess other privileges which are unlike anything of which the department store trust can avail itself.

Citizens' Sav. Bank v. Vaughan, 115 Mich. 156, 73 IST. W. 143 ; Ehoades v. Malta Vita Pure Pood Co. 149 Mich. 236, 112

2[^]. W. 940 ; Pittsburg Melting Co. v. Eeese, 118 Pa. 355, 12 Atl. 362 ; Walker v. Keystone Brewing Co. 131 Pa. 546, 20 Atl. 309 ; Mercantile Nat. Bank v. Lauth, 143 Pa. 53, 21 Atl. 1017 ; Andrews Bros. Co. v. Youngstown Coke Co. 39 Fed. 353; Dickinson V. Matheson Motor Car Co. 161 Ped. 874; Park Bro. & Co. V. Harwi, 2 Kan. App. 629, 42 Pac. 939.

This trust has no capital stock represented by shares.

Hussey v. Arnold, 185 Mass. 202, 70 N. E. 87 ; Linnell v. Xeon, 206 Mass. 71, 91 N. E. 895; Kinney v. Treasurer & Eeceiver General, 207 Mass. 368, - L.E.A. (IST. S.) - , 93 K P.:. 586.

This trust is not carrying on or doing business.

People ex rel. Parker Mills v. Tax Comrs. 23 JST. Y. 242 ; Ee Alabama & C. E. Co. 9 Blatchf. 390, Ped. Cas. 'So. 124.

Solicitor General Lehman argued the cause, and, with Mr. Henry E. Colton, filed a brief for the United States :

The common law is, just as much as the statutes, a part of "the laws of a state ; and the statutes are often nothing more than •declarations of the common law.

Van Ness v. Hyatt, 13 Pet. 294, 298, 10 L. ed. 168, 170; llorsell V. First Nat. Bank, 91 U. S. 357, 359, 23 L. ed. 436, 437; Bucher v. Cheshire E. Co. 125 U. S. 555, 583, 584, 31 L. ed. 795, 798, 799, 8 Sup. Ct. Eep. 974; Phelps v. The City •of Panama, 1 Wash. Terr. 523 ; Lycoming F. Ins. Co. v. Wright, •60 Vt. 517, 12 Atl. 103.

The Gushing Eeal Estate Trust and the department store 4rust are common-law joint stock companies.

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Kossakowski v. People, 1YY 111. 568, 53 N. E. 115 ; 1 Bates, Partn. § 72, pp. 88, 89 ; Taber v. Brack, 192 Mass. 361, 78 K E. 472; Howe v. Morse, 174 Mass. 499, 55 N. E. 213; 2 Cook, Corp. 6tli ed. § 504, p. 1357.

Joint stock companies are frequently, if not usually, formed under deeds of settlement and declarations of trust.

Liverpool & L. Life & E. Ins. Co. v. Massachusetts (Liverpool & L. Life & F. Ins. Co. v. Oliver) 10 Wall. 566, 568, 19 L. ed. 1029, 1030; Taber v. Breck, 192 Mass. 361, 78 N. E. 472.

The claim that these companies have no capital stock is absolutely without merit.

Howe v. Morris, 174 Mass. 496, 55 IST. E. 213.

The property of a company organized for the purpose of pursuing many activities may not improperly be said to be devoted to those activities, though from time to time some of those activities are not pursued.

People ex rel. Wall & H. Street Realty Co. v. Miller, 181 N. Y. 334, 73 JST. E. 1102.

The maintenance and operation of an office building is the carrying on of a business.

People ex rel. Wall & H. Street Realty Co. v. Miller, 181 N. Y. 336, 73 JSr. E. 1102.

Mr. Justice Day delivered the opinion of the court :
These cases present facts differing from those involved in the consideration of the corporation tax cases, just decided. Flint v. Stone Tracy Co. [220 U. S. 107, ante, 389, 31 Sup. Ct. Rep. 342.]

In 1904, the question is raised as to the right to lay a tax under this statute upon a certain trust formed for the purpose of purchasing, improving, holding, and selling lands and buildings in Boston, known as the Cushing Real Estate Trust. By the terms of the trust, the property was conveyed to certain trustees, who executed a trust agreement whereby the management of the property was vested in the trustees, who had absolute control and authority over the same, with right to sell for cash or credit, at public or private sale, and with full power to manage the property as they deemed best for the interest of the shareholders. The shareholders are to be paid dividends from time to time from the net income or net proceeds of the prop-

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erty, and twenty years after the termination of lives in being, the property to be sold, and the proceeds of the sale to be divided among the parties interested. The trustees were to issue 4,800 shares to the owners of the property, at \$100 each, the owners to receive a number of shares equal to the value of the interest conveyed to the trustees. The shares were transferable on the books of the trustees, and on surrender of the certificate, and the transfer thereof in writing, a new certificate is to issue to the transferee. No shareholder had any legal title or interest in the property, and no right to call for the partition thereof during the continuance of the trust. The legal representatives of a shareholder are to succeed to the interest of a shareholder, the interest passing by operation of law. Provision is made for the termination of the trust by an instrument

or instruments in writing, signed by not less than three fourths of the value of stock held by shareholders. Meetings of the shareholders are held at their discretion, or whenever requested in writing by five shareholders, or by shareholders owning not less than one tenth of the shares in value.

The trust has a building, leasing it to a single tenant. It also maintains and operates an office building with elevator service, janitor service, etc.

Case No. 496 involves what is known as a department store trust. It was created by deed, and formed for the purpose of purchasing and holding certain parcels of land in the city of Boston, and erecting a building thereon suitable for a department store. The land and buildings are leased to one tenant for a period of thirty years. The trust had transferable certificates issued to shareholders at the par value of \$100 each. The trustees conduct the affairs of the trust, manage the property, and pay dividends when declared. The shareholders meet annually, and a majority of them have the power to elect and depose trustees, and to alter and amend the terms of the trust agreement. This trust also continues for certain lives in being and for twenty years thereafter. Each of the trusts involved in these cases is in receipt of a net income exceeding \$5,000.

Under the terms of the corporation tax act, corporations and joint stock associations must be such as are "now or hereafter organized under the laws of the United States, or of any state

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or territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia."

The pertinent question in this connection is : Are these trusts organized under the laws of the state ? As we have construed the corporation tax act in the previous cases (Flint v. Stone Tracy Co. ante, 389), the tax is imposed upon doing business in a corporate or quasi corporate capacity ; that is, with the facility or advantage of corporate organization.

It was the purpose of the act to treat corporations and joint stock companies, similarly organized, in the same way, and assess them upon the facility in doing business which is substantially the same in both forms of organization. Joint stock organizations are not infrequently organized under the statute laws of a state, deriving therefrom, in a large measure, the characteristics of a corporation.

The language of the act " * * * now or hereafter organized under the laws of the United States," etc., imports an organization deriving power from statutory enactment. The statute does not say under the law of the United States, or a state, or lawful in the United States or in any state, but is made applicable to such as are organized under the laws of the United

States, etc. The description of the corporation or joint stock association as one organized under the laws of a state at once suggests that they are such as are the creation of statutory law, from which they derive their powers and are qualified to carry on their operations.

A trust of the character of those here involved can hardly be said to be organized, within the ordinary meaning of that term ; it certainly is not organized under statutory laws as corporations are. The difference between joint stock associations at common law and those organized under statutes is well recognized (2 Cook, Corp. § 505) :

"There is an essential difference between a joint stock company as it exists at common law and a joint stock company having extensive statutory powers conferred upon it by the state within which it is organized. The latter kind of joint stock companies is found in England and in the state of New York. To such an extent have these statutory powers been conferred on joint stock companies that the only substantial difference be-

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tween them and corporations is that the members are not exempt from liability as partners for the debts of the company."

The two cases now under consideration embrace trusts which do not derive any benefit from and are not organized under the statutory laws of Massachusetts. Joint stock companies of the statutory character are not known to the laws of that commonwealth. Eicker v. American Loan & T. Co. 140 Mass. 346, 5 N. E. 284. These trusts do not have perpetual succession, but end with lives in being and twenty years thereafter.

Entertaining the view that it was the intention of Congress to embrace within the corporation tax statute only such corporations and joint stock associations as are organized under some statute, or derive from that source some quality, or benefit not existing at the common law, we are of opinion that the real estate trusts involved in these two cases are not within the terms of the act. In that view the decrees in both cases will be reversed and the same remanded to the Circuit Court of the United States for the District of Massachusetts, with directions to overrule the demurrers, and for further proceedings consistent with this opinion.

Reversed.

UNITED STATES SUPREME COURT.

ARY E. ZONNE, Appt., v. MINNEAPOLIS SYNDICATE,
John De Laittre, Treasurer, and J. Frank Conklin, As-
sistant Treasurer.

[220 U. S. 187, 55 L. ed. 428.]

Internal revenue — excise on corporations — doing business.

A corporation organized for the purpose of owning and renting an office building, but whieli has wholly parted with the control and management of the property, and by the terms of a reorganization has disqualified itself from any activity in respect to it, its sole authority being to hold the title subject to a lease for 130 years, and to receive and distribute the rentals which may accrue under the terms of the lease, or the proceeds of any sale of the land, if it shall be sold, is not doing business within the meaning of the act of August 5, 1909 (36 Stat, at L. 11, 112-117, chap. 6, U. S. Comp. Stat. Supp. 1909, pp. 659,

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844-849), § 38, imposing an excise upon the doing or the carrying on of business in a corporate or quasi corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[No. 627.]

Submitted January 19, 1911. Decided March 13, 1911.

Appeal from the Circuit Court of the United States for the District of Minnesota to review a decree sustaining a demurrer to and dismissing a bill filed by a stockholder to restrain the corporation and its officers from complying with the Federal corporation tax. Reversed.

The facts are stated in the opinion.

Mr. Jolin R. Van Derlip submitted the cause for appellant.
Mr. Burt F. Lum was on the brief:

The grant to the incorporators of being and acting as a corporation differs from the privilege or franchise vested in the corporation, in that the power to do business as a corporation is the right and privilege — or franchise — of the incorporators.

Memphis & L. R. R. Co. v. Railroad Comrs. (Memphis & L. R. R. Co. V. Berry) 112 U. S. 609, 619, 28 L. ed. 837, 841, 5 Sup. Ct. Rep. 299; Home Ins. Co. v. New York, 134 U. S. 594, 33 L. ed. 1025, 10 Sup. Ct. Rep. 593; Ashley v. Ryan, 153 U. S. 436, 38 L. ed. 773, 4 Inters. Com. Rep. 664, 14 Sup. Ct. Rep. 865; Paul v. Virginia, 8 Wall. 181, 19 L. ed. 360;

Horn Silver Min. Co. v. New York, 143 U. S. 305, 312, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403 ; Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co. 86 Tex. 143, 22 L.R.A. 802, 24 S. W. 16.

Since franchises are property, and taxable as such (Veazie Bank v. Fenno, 8 Wall. 533, 19 L. ed. 482 ; Central P. R. Co. v. California, 162 U. S. 91, 126, 40 L. ed. 903, 915, 16 Sup. Ct. Rep. 766; Horn Silver Min. Co. v. New York, 143 U. S. 305, 313, 36 L. ed. 164, 167, 4 Inters. Com. Rep. 57, 12 Sup. Ct. Rep. 403) ; since it must be admitted that a franchise has no value save that which arises from the use and enjoyment of it; and since it is impossible to force a distinction between that which gives value to the property and the property itself (Pollock v. Farmers' Loan & T. Co. 158 U. S. 625, 626, 628, 39 L. ed. 1121, 1122, 15 Sup. Ct. Rep. 912),— the conclusion

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is inevitable that a tax upon the use of a franchise is a tax upon the franchise itself, and, unapportioned, is invalid.

See also Nicol v. Ames, 173 U. S. 509, 43 L. ed. 786, 19 Sup. Ct. Rep. 522.

When the liability of a corporation to pay a tax is made wholly dependent upon its earning a net income, and when the amount of the tax to be paid is wholly dependent upon the amount of such net income, it is impossible to escape the conclusion that, whatever it may be called, or under whatever law it may be imposed, the tax is an income tax, pure and simple.

Mcol V. Ames, 173 U. S. 515, 43 L. ed. 791, 19 Sup. Ct. Rep. 522.

The practical nature of the tax itself, its natural and reasonable effect, the criterion adopted to determine what corporations fall within the law, the measure of the burden in each case, all demonstrate to a certainty that the tax is in its character, and in the purpose of its authors an income tax, regardless of the language in which the statute is framed.

Henderson v. E"ew: York (Henderson v. Wickham) 92 U. S. 259, 23 L. ed. 543 ; State Freight Tax Case, 15 Wall. 232, 272, 21 L. ed. 146, 160; Cook v. Pennsylvania, 97 U. S. 566, 24 L. ed. 1015.

While an excise law must operate with uniformity throughout the United States, such uniformity demands not alone that it shall apply to the specified subjects of taxation wherever found, but equally that it shall lay its burden with just and uniform proportion upon each subject within its embrace.

Head Money Cases (Edye v. Eobertson) 112 U. S. 580, 28 L. ed. 798, 5 Sup. Ct. Rep. 247; Fatten v. Brady, 184 U. S.

608, 46 L. ed. 713, 22 Sup. Ct. Eep. 493; United States v. Singer, 15 Wall. Ill, 21 L. ed. 49; Home Ins. Co. v. New York, 134 U. S. 594, 607, 33 L. ed. 1025, 1032, 10 Sup. Ct. Eep. 593.

The Minneapolis Syndicate is not, and since January 1, 1907, has not been, a corporation organized for profit.

Mundy v. Van Hoose, 104 Ga. 292, 30 S. E. 783 ; Gray v.

Darlington, 15 Wall. 63, 21 L. ed. 45 ; Bennett v. Austin, 81

N. Y. 319; People ex rel. McMaster v. Niagara County, 4

Hill, 20.

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It is not, and since January 1, 1907, it has not been, carrying on or doing business of any kind.

Eoberts v. State, 26 Fla. 362, 7 So. 861 ; State v. Boston Club, 45 La. Ann. 585, 20 L.E.A. 185, 12 So. 895; Lyons-Thomas Hardware Co. v. Perry Stove Mfg. Co. 86 Tex. 153, 22 L.R.A. 802, 24 S. W. 16; Graham v. Hendricks, 22 La. Ann. 524; Harris v. State, 50 Ala. 127; Ee Alabama & C. E. Co. 9 Blatchf. 390, Fed. Cas. No. 124; Holmes v. Holmes, 40 Conn. 117; 21 Am. & Eng. Enc. Law, 2d ed. p. 811, notes 6, 8 ; People v. Horn Silver Min. Co. 105 N. Y. 83, 11 N. E. 155 ; State v. Barnes, 126 W. C. 1063, 35 S. E. 605 ; State v. Anniston Eolling Mills, 125 Ala. 121, 27 So. 921 ; Goddard v. Chaffee, 2 Allen, 395, 79 Am. Dec. 796 ; Hiekey v. Thompson, 52 Ark. 237, 12 S. W. 475; Shryock v. Latimer, 57 Tex. 677; Braeutigam v. Edwards, 38 N. J. Eq. 545.

Mr. John R. Van Derlip also filed a separate brief for appellant :

The carrying on or doing of business connotes something more than a single isolated act ; it implies continuity of activity along some given line.

Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 28 L. ed. 1137. 5 Sup. Ct. Eep. 739 ; General Conference v. Berkey, 156 Cal. 466, 105 Pac. 411; Atlantic Postal Teleg.-Cable Co. v. Savannah, 133 Ga. 66, 65 S. E. 184; Smith v. Anderson, L. E. 15 Ch. Div. 247, 50 L. J. Ch. N. S. 39, 43 L. T. N, S. 329, 29 Week. Eep. 21.

The corporation must be organized for profit.

Smith V. Anderson, L. E. 15 Ch. Div. 247, 50 L. J. Ch. N. S. 39, 43 L. T. K S. 329, 29 Week. Eep. 21.

Solicitor General Lehman submitted the cause for the United States :

The tax is an excise to which a corporation is subjected with respect to the business done by it, measured by its income from all sources, as it was in *Pacific Ins. Co. v. Soule*, 7 Wall. 433, 19 L. ed. 95, and *Michigan C. E. Co. v. Collector* (*Michigan C. E. Co. v. Slack*) 100 U. S. 595, 25 L. ed. 647, and this, in no event nor to any extent, makes the tax one upon property, for a corporation is organized to do something, and not simply to exist, and it holds its property not in mortmain, but as a means of, or an aid to, the accomplishment of that which it was

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organized to do. The activity of the company is not made the measure of the tax, except as that may manifest itself in the income ; and, on the other hand, that sloth is not made a reason for deduction from the measure cannot be a valid objection to the propriety of that measure.

Mr. Justice Day delivered the opinion of the court:

This case involves the validity of the corporation tax act just passed upon in No. 407, *Flint v. Stone Tracy Co.* [220 U. S. 107, ante, 389, 31 Sup. Ct. Rep. 342.]

The case presents a peculiarity of corporate organization and purpose not involved in the cases just decided. The Minneapolis Syndicate, as the allegations of the bill, admitted by the demurrer, show, was originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor. On the 27th of December, 1906, the corporation demised and let all of the tracts, lots, and parcels of land belonging to it, being the westerly half of block 87 in the city of Minneapolis, to Richard M. Bradley, Arthur Lyman, and Russell Tyson, as trustees, for the term of 130 years from January 1, 1907, at an annual rental of \$61,000, to be paid by said lessees to said corporation. At that time the corporation caused its articles of incorporation, which had theretofore been those of a corporation organized for profit, to be so amended as to read :

"The sole purpose of the corporation shall be to hold the title to the westerly one half of block 87 of the town of Minneapolis, now vested in the corporation, subject to a lease thereof for a term of 130 years from January 1, 1907, and, for the convenience of its stockholders, to receive, and to distribute among them, from time to time, the rentals that accrue under said lease, and the proceeds of any disposition of said land."

As we have construed the corporation tax law (*Flint v. Stone Tracy Co.* supra), it provides for an excise upon the carrying on or doing of business in a corporate capacity. We have held

in the preceding cases that corporations organized for profit under the laws of the state, authorized to manage and rent real estate, and being so engaged, are doing business within the meaning of the law, and are therefore liable to the tax imposed.

The corporation involved in the present case, as originally organized and owning and renting an office building, was doing,

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business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property ; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land, if it should be sold. The corporation had practically gone out of business in connection with the property, and had disqualified itself by the terms of reorganization from any activity in respect to it. We are of opinion that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909 [36 Stat, at L. 112, chap. 6, § 38, U. S. Comp. Stat. Supp. 1909, p. 844]. Holding this view, we think the court below erred in sustaining the demurrer to the bill. The decree of the court below is therefore reversed and the cause remanded to the Circuit Court of the United States for the District of Minnesota, with directions to overrule the demurrer, and for further proceedings consistent with this opinion.
Reversed.

UNITED STATES SUPREME COURT.

WILLIAM McCOACH, Collector of Internal Revenue, Petitioner, V. MIWEHILL & SCHUYLKILL HAVEN RAILROAD COMPANY.

[228 U. S. 295, 57 L. ed. 842.]

Internal revenue — excise on corporation — doing business.

1. A railroad company which, under legislative authority, has leased its entire railroad, with all its rights, powers, privileges, and franchises (except the franchise of being a corporation), for a term of years, at an annual rental, the lessees agreeing to keep the road in good order and repair, keep it in public use, and efficiently operate it and return it to the lessor company at the expiration or other determination of the lease, is not, with respect to the railroad, "engaged in business," within the meaning of the Federal corporation tax law of August 5, 1909 (36 Stnt. at L. 11, 112-117, chap. 6, U. S. Comp. Stat.

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Supp. 1911, pp. 741, 946-951), § 38, imposing an excise tax. upon corporations doing business in any state, although it retains the franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain or other reserved powers if and when required by the lessee, and ready to resume possession of the property at the expiration of the lease.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.1 Internal revenue - excise on corporation - doing business,

2. The mere receipt by a lessor railway company of the income from its leased railway property (the property being used in business by the lessee, and not by the lessor), and the receipt of interest and dividends from invested funds, bank balances, and the like, and the payment of organization and administration expenses incidental to the receipt of such moneys, and their distribution among the stockholders, do not constitute such a business as is taxable under the Federal corporation tax law of August 5, 1909, § 38, imposing an excise tax upon the doing or carrying on of business in a corporate capacity.

[For other cases, see Internal Revenue, III., in Digest Sup. Ct. 1908.]

[No. 670.]

Argued January 14 and 15, 1913. Decided April 7, 1913.

On writ of Certiorari to the United States Circuit Court of Appeal for the Third Circuit to review a judgment which affirmed a judgment of the District Court for the Eastern District of Pennsylvania for the recovery back of certain taxes exacted under the Federal corporation tax law. Affirmed.

The facts are stated in the opinion.

Solicitor General Bullitt argued the cause and filed a brief for petitioner:

If a corporation exercises its privilege to do any business in a corporate capacity, no matter how small such business is, it is subject to the tax.

Flint v. Stone Tracy Co. 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

The doctrine of *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361, will have to be considerably extended in order to include the case at bar.

Mr. George Wharton Pepper argued the cause, and, with Messrs. Eli Kirk Price and William B. Bodine, Jr., filed a brief for respondent :

To be a corporate landlord is not equivalent to doing business.

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Zonne v. Minneapolis Syndicate, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361.

Messrs. E. Parmelee Prentice, George Welwood Murray, and Charles P. Howland filed a brief as amici curiae for the Albany & Susquehanna Railroad Company :

The Federal corporation tax is imposed not upon franchises of the corporation irrespectively of their use in business, nor upon the property of the corporation, but upon the doing of corporate business and with respect to the carrying on thereof, that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described.

Flint V. Stone Tracy Co. 220 U. S. 145, 55 L. ed. 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312.

The corporation tax cannot be measured by so much of the rental of leased property as is paid by the lessee to stockholders of the lessor, and probably the same argument would apply to the portion of rental paid as interest to bond holders, for here, too, so far as relates to the present question, there has been a novation.

Humphreys v. McKissock, 140 U. S. 304, 35 L. ed. 473, 11 Sup. Ct. Rep. 779.

ISTo corporation makes money by stockholder's meetings, election of officers and preservation of franchises — ^necessary as these and many other acts may be.

Pennsylvania Steel Co. v. New York City E. Co. 193 Fed. 286; 117 C. C. A. 556, 198 Fed. 774; Albany & Susquehanna E. Co. V. Durey, N. Dist. Ct. N. Y. April, 1912 ; Morris & Essex E. Co. v. Anderson, S. Dist. Ct. K Y. March, 1912; Mine Hill & S. H. E. Co. v. McCoach, 192 Fed. 670, affirmed C. C. A. 3rd C. March Term, 1912.

Mr. Justice Pituey delivered the opinion of the court :
The Minehill & Schuylkill Haven Eailroad Company, the respondent herein (called for convenience the Minehill Company), sued the petitioner, who is collector of internal revenue at Philadelphia, to recover certain taxes for the years 1909 and 1910, paid under protest by that company under the cor-

poration tax act of 1909. [36 Stat, at L. 11, chap. 6, U. S. Comp. Stat. Supp. 1911, p. 741.] The United States circuit

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court held that the company was not "engaged in business" within the meaning of the act, and that therefore the taxes had been illegally assessed, and rendered judgment for their recovery. 192 Fed. 670. The circuit court of appeals affirmed the judgment, and the case comes here upon certiorari.

The facts appear from the plaintiff's statement of claim and the defendant's affidavit of defense, which latter was overruled as insufficient. They may be summarized as follows: The Minehill Company was incorporated by an act of the legislature of the state of Pennsylvania, approved March 24, 1828 (P. L. p. 205), for the purpose of constructing and operating a railroad, with appropriate powers, including the power of eminent domain. Under this charter a railroad was built and for many years operated. Under the authority of general acts of the legislature, approved respectively April 23, 1861 (P. L. p. 410), and February 17, 1870 (P. L. p. 31), the Minehill Company, in the year 1896, leased its entire railroad, with all side tracks, extensions, and appurtenances of every kind, and all rolling stock and personal property of every description, in use or adapted for use in, upon, or about the railroad (excepting some property intended to have been described in a schedule annexed to the lease, but which is not described, no such schedule having been annexed), and also - "All the rights, powers, franchises (other than the franchise of being a corporation), and privileges which may now, or at any time hereafter during the time hereby demised, be lawfully exercised or enjoyed in or about the use, management, maintenance, renewal, extension, alteration, or improvement of the demised premises, or any of them," unto the Philadelphia & Reading Railway Company for a term of nine hundred and ninety-nine years from January 1, 1897, at a yearly rental of \$252,612, that being equivalent to 6 per centum upon the capital stock of the Minehill Company.

The lessee agreed to keep the road in good order and repair, keep it in public use and efficiently operate it, and return it to the lessor company at the expiration or other determination of the lease. The Minehill Company agreed during the term of the lease to maintain its corporate existence and organization, and that when requested by the lessee it would "put in force and exercise each and every corporate power, and do each and

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every corporate act, which the Minehill Company might now, or at any time hereafter, lawfully put in force or exercise, to enable the railway company (the lessee) to enjoy, avail itself

of, and exercise, every right, franchise, and privilege in respect of the use, management, maintenance, renewal, extension, etc., of the property demised, and of the business to be there carried on." It was provided that upon default in the payment of the rent reserved, or in the performance of certain other covenants, the lessor might declare the lease forfeited, and re-enter and repossess the demised premises. The lease further provided that the lessee might, under certain circumstances, abandon certain railway lines "whenever it shall be found legally practicable to abandon so much of the said lines of railroad, without working a forfeiture or any impairment of the chartered rights and franchises of the Minehill Company as to its railroads, or any part thereof, or without creating any liability on the part of the Minehill Company or the railway company, to the public or the commonwealth, for the nonuser of such portions of the railroad lines." In the event thus provided for the abandoned rails, machinery, etc., are to be sold and the proceeds turned over to the Minehill Company, and the annual rental proportionately reduced.

Pursuant to this lease the entire railroad and all property connected therewith was turned over to the Reading Company, and since then has been operated by that company, and the Minehill Company has not carried on any business in connection with the operation of it. It has, however, maintained its corporate existence and organization by the annual election of a president and board of managers, and this board has annually elected a secretary and treasurer. It receives annually from the Reading Company the fixed rental called for by the lease, and it receives annually sums of money as interest on its bank deposits, and also maintains a "contingent fund," from which it receives annual sums as interest or dividends. And it annually pays the ordinary and necessary expenses of maintaining its office and keeping up the activities of its corporate existence, including the payment of salaries to its officers and clerks. It keeps and maintains at its offices, stock books for the transfer of its capital stock, and this stock is bought and sold upon the market. The annual income from the contingent fund appears

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to be about \$24,000, its annual payments for state taxes about as much, and its expenditures for corporate maintenance about \$5,000.

The corporation tax law (act of August 5, 1909, § 38, 36 Stat, at L. chap. 6, pp. 11, 112-117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946-951) provides:

"That every corporation * * * organized for profit and having a capital stock represented by shares * * * and engaged in business in any state * * * shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation * * * equivalent to one per centum upon the entire net income over and

above \$5,000, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations * * * subject to the tax hereby imposed. * * *

"Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, * * * received within the year from all sources: (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, * * *"

In *Mint v. Stone Tracy Co.* 220 U. S. 107, 55 L. ed. 389, 31 Sup. Ct. Eep. 342, Ann. Cas. 1912B, 1312, the question of the constitutionality of this act was presented here for decision. Upon the preliminary question of interpretation the court said (p. 145) :

"It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof, in a sum equivalent to 2 per centum upon the entire net income over and above \$5,000, received from all sources during the year ; that is, when imposed in this manner it is a tax upon

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the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organizations of the character described. As the latter organizations share many benefits of corporate organization it may be described generally as a tax upon the doing of business in a corporate capacity. * * * The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above \$5,000, from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from property used in business, but from every source."

In discussing the constitutional question, reference was first made to the case of *Pollock v. Farmers' Loan & T. Co.* 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Eep. 912, which held the income tax provisions of the act of August 27, 1894 (28 Stat., at L. chap.

349, pp. 509, 553, §§ 27, etc. U. S. Comp. Stat. 1901, p. 2260), to be unconstitutional because amounting to a direct tax within the meaning of the Constitution, and because not apportioned according to population, as required by that instrument. Attention was called (220 U. S. 148) to the expressions used by Mr. Chief Justice Fuller, speaking for the court in the Pollock Case, upon the rehearing, as to the distinction between a tax upon the income derived from real estate and from invested personal property, on the one hand, and an excise tax upon business privileges, employments, and vocations, upon the other. Reference was also made to the interpretation put upon the decision in the Pollock Case in Knowlton v. Moore, 178 U. S. 41, 80, 44 L. ed. 969, 985, 20 Sup. Ct. Eep. 747, and in Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 48 L. ed. 496, 24 Sup. Ct Rep. 376, and it was held that the corporation tax law of 1909 "does not impose direct taxation upon property, solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under art. 1, § 8, cl. 1 of the Constitution, and described generally as taxes, duties, imposts, and excises, upon which the limitation is that they shall be uniform throughout the United States."

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In applying this principle to the several cases then sub judice, — in some of which the validity of the tax was challenged by the stockholders of certain real estate companies whose business was principally the holding and management of real estate, — the court dealt, among others (220 U. S. 170), with the Park Realty Company, organized to "work, develop, sell, convey, mortgage, or otherwise dispose of real estate ; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings ; to conduct, operate, manage, or lease hotels, apartment houses, etc. ; to make and carry out contracts in the manner specified concerning buildings * * * and generally to deal in, sell, lease, exchange, or otherwise deal with lands, buildings, and other property, real or personal," etc. At the time the bill was filed in that case the business of the Park Realty Company related only to the management and leasing of one hotel. Others of the realty companies that were before the court were engaged in more extensive business transactions. The court held (p. 171) :

"We think it clear that corporations organized for the purpose of doing business, and actually engaged in such activities as leasing property, collecting rents, managing office buildings, making investments of profits, or leasing ore lands and collecting royalties, managing wharves, dividing profits, and in some cases investing the surplus, are engaged in business within the

meaning of this statute, and in the capacity necessary to make such organizations subject to the law."

Another case argued and decided at .the same time, but separately reported, is *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Rep. 361. In this case the court held that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909, because, while originally organized for and engaged in the business of letting stores and offices in a building owned by it, and collecting and receiving rents therefor, it had afterwards made a lease of all lands belonging to it to certain trustees for a term of 130 years, and then had caused its articles of incorporation, which had been those of a corporation organized for profit, to be so amended as to confine the purpose of the corporation to the ownership of the lands in question, subject to the lease, and "for the convenience of its stockholders to

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receive, and to distribute among them, from time to time, the rentals that accrue, under said lease, and the proceeds of any disposition of said land." The court said:

"The corporation involved in the present case, as originally organized, and owning and renting an office building, was doing business within the meaning of the statute as we have construed it. Upon the record now presented we are of opinion that the Minneapolis Syndicate, after the demise of the property and reorganization of the corporation, was not engaged in doing business within the meaning of the act. It had wholly parted with control and management of the property; its sole authority was to hold the title subject to the lease for 130 years, to receive and distribute the rentals which might accrue under the terms of the lease, or the proceeds of any sale of the land, if it should be sold. The corporation had practically gone out of business in connection with the property, and had disqualified itself by the terms of reorganization from any activity in respect to it."

The precise question presented by the present record is whether the Minehill Company is "doing business" in the sense in which the realty companies concerned in *Flint v. Stone Tracy Co.* 220 U. S. 107, 170, 55 L. ed. 410, 421, 31 Sup. Ct. Rep. 342, were doing business, or had gone out of business in substantially the same sense that the Minneapolis Syndicate had done so.

From the facts as stated above it is entirely clear that the Minehill Company was not, during the years of 1909 and 1910, engaged at all in the business of maintaining or operating a railroad, which was the prime object of its incorporation. This business, by the lease of 1896, it had turned over to the Eading Company. If that lease had been made without authorization of law, it may be that for some purposes, and possibly for the

present purpose, the lessee might be deemed in law the agent of the lessor; or, at least, the lessor held estopped to deny such agency. But the lease was made by the express authority of the state that created the Minehill Company, conferred upon it its franchise, and imposed upon it the correlative public duties. The effect of this legislation and of the lease made thereunder was to constitute the Eeading Company the public agent for the operation of the railroad, and to prevent the Minehill

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Company from carrying on business in respect of the maintenance and operation of the railroad so long as the lease shall continue. And it is the Eeading Company, and not the Minehill Company that is "doing business" as a railroad company upon the lines covered by the lease, and is taxable because of it. The corporation tax law does not contemplate double taxation in respect of the same business.

The government points out that by the terms of the act the Eeading Company is allowed to deduct from its gross income the \$252,612 paid annually to the Minehill Company for rentals under the lease, with the result that, unless the latter company is held to be "doing business" as a railroad company, both lessor and lessee entirely escape from taxation on \$252,612 of income. But an examination of the act shows that this is the precise result intended by Congress. "ISTet income shall be ascertained by deducting from the gross amount of the income * * * (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges, such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property." The deduction of rentals is not confined to such as are paid to companies that are subject to the tax imposed by the act; and yet the suggestion that it might be so confined was present in the mind of the draftsman, for below there is a provision for deducting "(fifth) all amounts received * * * as dividends upon stock of other corporations * * * subject to the tax hereby imposed." In short, Congress said, and intended to say, as to rentals paid for the use or possession of property and franchises employed by the lessee company in a business taxable under the act, - let there be a deduction by the lessee of the amount of such rentals, whether the lessor is within the reach of the taxing scheme or not.

We conclude that the Minehill Company was not taxable with respect to the railroad business.

It should be mentioned that there is nothing in the record to show that during the taxing years in question the company exercised its power of eminent domain, or put in force any other special corporate power, in aid of the business of the lessee. We therefore do not pass upon the question whether, if it should

do so, it would be taxable under the act in question. We cannot, however, agree with the contention made in behalf of the government, that because the Minehill Company retains its franchise of corporate existence, maintains its organization, and holds itself ready to exercise its franchise of eminent domain, or other reserved powers, if and when required by the lessee, and ready to resume possession of the property at the expiration of the lease, it is therefore to be treated as doing business, in respect of the railroad, within the meaning of the corporation tax law. As to these matters the case is governed by what was said by the court in *Flint v. Stone Tracy Co.* 220 U. S. 145, 55 L. ed. 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912B, 1312 : "It is therefore apparent, giving all the words of the statute effect, that the tax is imposed not upon the franchises of the corporation, irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and with respect to the carrying on thereof." And again, p. 150, - "The tax is not payable unless there be a carrying on or doing of business in the designated capacity, and this is made the occasion for the tax, measured by the standard prescribed."

There remains to be considered the fact that the Minehill Company has a considerable amount of personal assets known as its "contingent fund," in the form of investments (the amount, and particulars are not specified), from which it derives an annual income of about \$24,000; that it keeps a deposit in bank, receives and collects interest upon such deposit, and distributes the income thus received, as well as the rentals received from the Leasing Company (after payment of expenses and taxes), to its stockholders in the form of dividends.

In our opinion the mere receipt of income from the property leased (the property being used in business by the lessee, and not by the lessor) and the receipt of interest and dividends from invested funds, bank balances, and the like, and the distribution thereof among the stockholders of the Minehill Company, amount to no more than receiving the ordinary fruits that arise from the ownership of property. The ground of the decision in the *Pollock Case* was that a tax upon income received from real estate and invested personal property (as distinguished from income received from the transaction of business) was in

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effect a direct tax upon the property itself, and therefore invalid unless apportioned according to population. In the *Flint Case*, in sustaining the act of 1909 as a tax upon the privilege of doing business in corporate form, against the objection that it includes within its reach the income of real estate and personal property not used in the business, and not the subject of taxa-

tion, the court said (220 U. S. 163) : "The measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself nontaxable." And again, after referring to previous decisions (220 U. S. 165) : "It is therefore well settled by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which, of itself considered, is nontaxable. Applying that doctrine to this case, the measure of taxation being the income of the corporation from all sources, as that is but the measure of a privilege tax within the lawful authority of Congress to impose, it is no valid objection that this measure includes, in part, at least, property which, as such, could not be directly taxed. * * * The tax must be measured by some standard, and none can be chosen which will operate with absolute justice and equality upon all corporations. Some corporations do a large business upon a small amount of capital; others with a small business may have a large capital. A tax upon the amount of business done might operate as unequally as a measure of excise as it is alleged the measure of income from all sources does. It can be justly said that investments have no real relation to the business transacted by a corporation. The possession of large assets is a business advantage of great value; it may give credit which will result in more economical business methods; it may give a standing which shall facilitate purchases ; it may enable the corporation to enlarge the field of its activities and in many ways give it business standing and prestige."

In short, the inclusion of income derived from property in arriving at the measure of the tax to be imposed with respect to the doing of corporate business was sustained largely because the property not used in the business, and the income from

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such property, have a fair relation to the business itself, and may contribute materially to its proper and economical conduct. But that reasoning furnishes no support for the contention that the mere receipt of income from property, and the payment of organization and administration expenses incidental to the receipt and distribution thereof, constitute such a business as is taxable -within the meaning of the act of 1909. The distinction is between (a) the receipt of income from outside property or investments by a company that is otherwise engaged in business ; in which event the investment income may be added to the business income in order to arrive at the measure of the tax; and (b) the receipt of income from property or investments by a company that is not engaged in business except the business of owning the property, maintaining the investments, collecting the income, and dividing it among its stockholders. In the former case the tax is payable ; in the latter not.

And so, upon the whole, we think the court below correctly held that the present case is governed by *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Eep. 361, and that the taxes under consideration were unlawfully imposed.

Judgment affirmed.

Mr. Justice Day, dissenting:

I am unable to concur in the opinion of the majority of the court. It seems to me that, applying the principles laid down in the Corporation Tax Cases (*Flint v. Stone Tracy Co.*) 220 U. S. 107, 55 L. ed. 389, 81 Sup. Ct. Eep. 342, Ann. Cas. 1912B, 1312, the Minehill & Schuylkill Haven Eailroad Company is a corporation doing business within the meaning of the law, and subject to the tax.

We are advised by a brief filed by an amicus curice that the decision in this case will affect a number of cases now pending, and, owing to its importance as affecting the public revenue, I feel justified in briefly stating the grounds of my dissent.

The corporation tax is imposed under the terms of the law upon every corporation organized for profit, having a capital stock represented by shares, and engaged in business in any itate. Every such corporation is subject to a special excise tax with respect to the carrying on or doing of business, equivalent

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to 1 per cent upon the entire net income over and above \$5,000, received by it from all sources during the taxing year. This tax, it was held in 220 U. S., was constitutionally imposed, and rests upon the doing of business with the advantages which inhere in the peculiarities of corporate or joint stock organization. As was said in that case, doing business is a very comprehensive term, embracing about everything in which a person can be employed, and the definition of business as "that which occupies the time, attention, and labor of men for the purpose of a livelihood or profit" was adopted and approved. As is said in the majority opinion, the precise question in this case is. Was the Minehill Company doing business in the sense in which the term is employed in the law, or had it gone out of business in such substantial sense that it was no longer subject to the law ?

I do not care to restate the facts, which are developed fully in the majority opinion. It therein appears that the Minehill Company, while it has leased its railroad for a term of years, still maintains corporate organization, keeps an office and an office force, and collects the rentals from the lessee company, and distributes the sums among its shareholders. It has also agreed to keep up its corporate organization, and, if necessary, to use its corporate powers for the benefit of the lessee. And

its activities do not stop here. The affidavit in defense, filed by the collector, which I understand the Pennsylvania practice takes as true, shows that the company receives annually sums of money as interest on deposits, and maintains a contingent fund from which it also receives annual sums as dividends. The return discloses that the amount of dividends received for the year ending December 31, 1909, as interest on deposits, and from its contingent fund, was \$24,471.07. The nature and amount of the investments are not specified in the record, but they must be very considerable, in view of the annual income derived.

We are therefore brought to the direct question, is a live corporation which, though it has leased its railroad property for a term of years, maintains and has agreed to maintain its corporate organization, collects and distributes an annual rental of \$252,612, keeps and maintains an office and an office force at large expense, deposits money upon interest, and receives and distributes the earnings thereof, invests a large fund which, Foster Income Tax. - 79.

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together -with interest on deposits, yields over \$24,000 a year, doing business within the meaning of the corporation tax act ? The amount of business done is utterly immaterial. The doing of any business with the advantages which inhere in corporate organization brings the corporation within the terms of the act. Such was the ruling in the Flint Case, after full consideration by this court of the terms and scope of the law.

It is said, however, that this case is controlled by the ruling in the Zonne Case, which was decided at the same time as the Flint Case (220 F. S. 187, 55 L. ed. 428, 31 Sup. Ct. Eep. 361). It seems to me that the present case is quite unlike that one. There the corporation, which owned a piece of real estate, had leased it for a term of 130 years at an annual rental of \$61,000, and had, at the same time, amended its corporate organization so as to limit its powers to the sole purpose of holding the title to the lands leased, and of receiving and distributing among its stockholders the rentals that accrued under the lease, and the proceeds from any disposition of the land. This was the whole extent of its activity, and the amounts derived therefrom represented its entire income. In that case the court held that the corporation had practically gone out of business, and had disqualified itself from any activity in respect thereof, and therefore did not come within the scope of the act.

In the present case the corporation has not disqualified itself from business activity. It maintains a considerable force in active employment, and, entirely apart from the receipts from the railroad lease, so deposits and invests its funds as to create, in these days of low interest upon good investments, an annual income of over \$24,000, as appears by its return. The amount

derived from investments depends upon the exercise of judgment and the efficiency of management. If business includes everything that occupies the time, attention, and labor of men for profit, it seems to me that these facts show that the Minehill Company is carrying on business in the present instance.

I am unable to agree that a corporation whose officers and agents are engaged in its behalf in selecting banks in which to deposit large sums of money, in passing upon and choosing securities in which corporate funds are to be invested, and then in distributing the interest and profits accruing therefrom among

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Its stockholders, is not engaged in doing business in the sense that the corporation in the Zonne Case was not.

I think the present case is much nearer the ruling made by this court in the Corporation Tax Cases in the matter of the realty companies therein involved. Take, for instance, the Park Realty Company. That corporation was organized to work, develop, sell, and convey real estate; to lease, exchange, hire, or otherwise acquire property; to erect, alter, or improve buildings; to conduct, operate, manage, or lease hotels, etc. It appeared that at the time of the imposition of the tax the sole business or property owned by the Realty Company was the Hotel Leonori. It was leased for twenty-one years at an annual rental of \$55,000. The corporation was engaged in no business, except the management and lease of that hotel property, and was in receipt of no other income than that derived from its rental, and had no assets other than that property and the income thereof. It was held to be doing business within the meaning of the act. The Minehill Company, it seems to me, is doing more and a greater variety of business than was attributed to the Park Realty Company as the basis of the assessment upon it. Others of the realty companies held taxable in the Corporation Tax Cases, it seems to me, were engaged in as little business activity as is the corporation herein involved.

With deference to the majority opinion, I think the Minehill Company, upon the facts here adduced, is engaged in business and ought to be held liable to the tax.

Mr. Justice Hughes and Mr. Justice Lamar concur in this dissent.

SOUTH CAROLINA SUPREME COURT.

D. W. ALDERMAN, Appt., v. L. L. WELLS, County Treasurer, Respt.

[85 S. C. 507, 67 S. E. 781; 21 Ann. Cas. 193, 27 L.E.A. (N.S.) 864, with

note.]

Tax - income - graduation - validity.

1. A graduated income tax which exempts incomes under a specified

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amount, and increases the tax as the income reaches stated amounts above that sum, does not deny taxpayers the equal protection of the laws, or deprive them of their property without due process of law. Same - Constitution - construction.

2. A constitutional provision that the rate of taxation shall be equal and uniform does not apply to taxes on incomes, where another provision states that the legislature may provide for a graduated tax on incomes.

Same - corporation - income - double.

3. That an income is derived from corporate dividends, and that the corporation pays taxes on its property and franchises, does not render a tax on such income double, so as to be invalid.

Same - annual assessment - validity.

4. A statute providing for an income tax which is to be a certain percentage of the amount of the incomes does not violate a constitutional provision that the general assembly shall levy an annual tax sufficient to pay the estimated expenses of the state for each year, where the levy of the income tax is to be made annually.

Statute - income tax - statement of object.

5. A statute providing for a tax on incomes sufficiently complies with a constitutional provision that no tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, where its title provides that the act is one to raise revenue for the support of the state government.

Tax - income - exception - validity.

6. A tax on incomes provided by the legislature is within the exception to another statute forbidding the collection of any other taxes than those provided by the statute, except such special tax as is authorized under an act of the general assembly.

(April 12, 1910.)

Appeal by plaintiff from a judgment of the Common Pleas Circuit Court for Clarendon County in defendant's favor in an action brought to recover back an income tax which had been paid under protest. Affirmed.

The facts are stated in the opinion.

Messrs. Charlton DuRant and H. E. Davis, for appellant:

The 14th Amendment imposes a limitation on the exercise of all the powers of the state, including that of taxation.

27 Am. & Eng. Enc. Law, 2d ed. p. 590.

Unequal taxes may not be imposed on property of the same kind, in the same situation, and used for the same purpose.

Eailroad Tax Cases, 13 Fed. Y22; Santa Clara County V.

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Southern P. E. Co. 9 Sawy. 165, 18 Fed. 385, affirmed in 118 U. S. 394, 30 L. ed. 118, 6 Sup. Ct. Rep. 1132 ; Gulf, C. & S. F. R. Co. V. Ellis, 165 U. S. 150, 41 L. ed. 666, 17 Sup. Ct. Rep. 255 ; Bell's Gap R. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Rep. 533 ; Yick Wo v. Hopkins, 118 U. S. 356, 369, 30 L. ed. 220, 226, 6 Sup. Ct. Rep. 1064.

The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment ; and in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground, - some difference which bears a just and proper relation to the attempted classification, - and is not a mere arbitrary selection.

Fraser v. McConway & T. Co. 82 Fed. 258 ; Juniata Limestone Co. V. Fagley, 187 Pa. 193, 42 L.R.A. 442, 67 Am. St. Rep. 579, 40 Atl. 977; Wanser v. Hoos, 60 IST. J. L. 482, 64 Am. St. Rep. 600, 38 Atl. 449 ; Cotting v. Kansas City Stock Yards Co. (Cotting v. Godard) 183 U. S. 79, 46 L. ed. 92, 22 Sup. Ct. Rep. 30 ; Johnson v. Goodyear Min. Co. 127 Cal. 4, 47 L.R.A. 338, 78 Am. St. Rep. 29, 59 Pac. 304; Re Pell, 171 N. Y. 48, 57 L.R.A. 540, 89 Am. St. Rep. 797, 63 N. E. 789.

The act denies the equal protection of the laws.

Raymond v. Chicago Union Traction Co. 207 U. S. 20, 52

L. ed. 78, 28 Sup. Ct. Rep. 7, 12 A. & E. Ann. Cas. 757; Cum-
mings V. Merchants' JStat. Bank, 101 U. S. 153, 25 L. ed. 903 ;
Pelton V. Commercial Nat. Bank, 101 U. S. 143, 25 L. ed. 901 ;
ISTew York v. Weaver, 100 U. S. 539, 25 L. ed. 705 ; State ex
rel. Johnson v. Chicago, B. & Q. R. Co. 195 Mo. 228, 113 Am.
St. Rep. 661, 93 S. W. 784; Laurens v. Anderson, 75 S. C.
62, 117 Am. St. Rep. 885, 55 S. E. 136, 9 A. & E. Ann. Cas.
1003; Standard Oil Co. v. Spartanburg, 66 S. C. 37, 44 S. E.
377.

The tax is not equal and uniform. '

State V. Tucker, 56 S. C. 516, 35 S. E. 215 ; Re Page, 60
Kan. 842, 47 L.R.A. 68, 58 Pac. 478; Hamilton v. Wilson, 61
Kan. 511, 48 L.R.A. 238, 59 Pac. 1069 ; State Central R. Co.
Prosecutor v. State Assessors, 48 N. J. L. 1, 57 Am. Eep. 516,
2 Atl. 789 ; State v. Tde, 35 Wash. 576, 67 L.R.A. 280, 102
Am. St Rep. 914, 77 Pac. 961, 1 A. & E. Ann. Cas. 634.

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Where tax boards intentionally assess property belonging to
different persons, such as individuals and corporations, at differ-
ent rates or by different systems of valuation, it amounts to a
denial of the rule of uniformity and equality prescribed by the
Constitution.

Cincinnati Southern K. Co. v. Guenther, 19 Fed. 398; Cum-
mings V. Merchants' Nat. Bank; Pelton v. Commercial Nat.
Bank; and People v. Weaver, - supra; Dundee Mortg. Trust
Invest. Co. y. Parrish, 11 Sawy. 92, 24 Fed. 202 ; Taylor v.
Louisville & N. E. Co. 31 C. C. A. 537, 60 U. S. App. 166,
88 Fed. 350; Railroad & Teleph. Cos. v. Board of Equalizers,
85 Fed. 302 ; State v. Columbia, 6 S. C. 1 ; Murph v. Landrum,
76 S. C. 21, 56 S. E. 850.

As to double taxation, see : -

San Francisco v. Mackey, 10 Sav?y. 300, 21 Fed. 539, s. c.
22 Fed. 602 ; Detroit Citizens' Street R. Co. v. Detroit, 12.'>
Mich. 673, 84 Am. St. Rep. 589, 85 N. W. 96, 86 N. W. 809 ;
Brown v. Maryland, 12 Wheat. 419, 444, 6 L. ed. 678, 687 ;
Weston V. Charleston, 2 Pet. 449, 7 L. ed. 481; Dobbins v.
Erie County, 16 Pet. 435, 10 L. ed. 1022; Almy v. California,
24 How. 169, 16 L. ed. 644; Philadelphia & S. Mail S. S.
Co. V. Pennsylvania, 122 U. S. 326, 30 L. ed. 1200, 1 Inters.
Com. Rep. 308, 7 Sup. Ct. Rep. 1118 ; Chicago v. Collins, 175
111. 445, 49 L.R.A. 408, 67 Am. St. Rep. 224, 51 IST. E. 907;
27 Am. & ,Eng. Enc. Law, pp. 607-609.

The tax is invalid, because the statute exempts incomes under
\$2,500 from the payment of such tax, and thereby creates an
unlawful discrimination.

Pollock y. Farmers' Loan & T. Co. 157 U. S. 429, 39 L.

ed. 759,, 15 Sup. Ct. Rep. 673 ; Citizens" Sav. & L. Asso. v. Topeka, 20 Wall. 655, 22 L. ed. 455 ; Parkersburg v. Brown, 106 U. S. 487, 27 L. ed. 238, 1 Sup. Ct. Rep. 442; Barbour v. Louisville Bd. of Trade, 82 Ky. 645 ; Lexington v. McQuillin, 9 Dana, 513, 35 Am. Dec. 159 ; Sutton v. Louisville, 5 Dana, 28; Cooley, Taxn. 2d ed. 215; 1 Hamilton's Works 1885 ed. 270.

The statute is unconstitutional for the reason that the greater part of plaintiff's income was derived from dividends from stock in corporations, and; as these corporations had previously paid all taxes required by. the state laws, to compel payment by plain-

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tiff would amount to unjust discrimination against stockholders of corporations.

San Francisco v. Mackey, 10 Sawy. 300, 21 Fed. 539.

A general tax is one imposed on all persons within the territorial limits, according to the value of their property, in consideration of the protection which the government affords alike to all.

Gould V. Baltimore, 59 Md. 378 ; Meier v. Kelly, 20 Or. 86, 25. Pac. .73 ; Illinois O. E. Co. v. Decatur, 147 U. S. 190, 37 L. ed. 132, 13 Sup. Ct. Eep. 293 ; Shurtleff v. Chicago, 190 111. 473, 60 ISr. E. 870; State ex rel. Donnelly v. Hobe, 106 Wis. 411, 82 JSr. W. 336.

Messrs. /. Fraser Lyon, Attorney General, and /. H. Lesesne for respondent.

Hydeick, J., delivered the opinion of the court:

The plaintiff paid his income tax for the year 1905, under protest, and brought this action to recover it back, under the provisions of § 413 of the Civil Code of 1902. He alleges that the act which authorized the levy and collection of the tax is unconstitutional because it denies to him the equal protection of the laws and due process of law, in that: (1) Incomes under \$2,500 are not taxed, and incomes over said amount are taxed; this being an arbitrary and unreasonable classification, and not being founded on the said income supporting a family, or being used in any particular manner or by any class of persons. (2) That incomes less than \$5,000 pay a tax of 1 per cent, and incomes from \$10,000 to \$15,000 pay a tax of 2^ per cent. (3) That said tax includes all natural persons, and excludes all corporations. (4) That nearly all of plaintiff's income for the year for which the said tax was assessed was derived from dividends received from stock in corporations chartered under the laws of the state of South Carolina, and the said corporations had been required to pay the franchise tax in the proportion to the amount of their capital stock, as required by the laws of the state of South Carolina,

and, in addition, the said corporations had been taxed and required to pay taxes upon their property for usual state, county, and municipal purposes ; and the same amounts to an unreasonable discrimination against and tax upon the stockholders of

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corporations. (5) In that no tax is assessed against the increase in values of property during the year, or from property sold at greater than cost price, or for any increase in market values of stock, bonds, or other investments; this being an unreasonable and arbitrary classification of property for taxation.

(6) In that no deduction is made for any interest or other like expenditures which reduce the net income, and are not exempt in said act as expenses of carrying on business. (7) In that no deduction is made for taxes or other assessments paid the government; the said income tax act thereby being a tax on other taxes, and subjecting some property to double and treble taxation. (8) In that no deduction is allowed for losses, without regard to the nature or cause of same. He also alleges that it violates §§ 2 and 3, art. 10, of the Constitution, and that it was repealed by § 5, supply act 1905 (act February 18, 1905 [24 Stat. atL. p. 993]).

To a proper understanding of the questions involved, it will be necessary to set out the first two sections of the act, which is incorporated in §§ 325 to 331 of the Civil Code of 1902.

"Sec. 325. There shall be annually assessed, levied, and collected upon the gains, gross profits, and income received during the preceding calendar year by every citizen of this state, whether such gains, profits, or income be derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in this state or from any other source whatever, a tax of 1 per cent on the amount so derived over and above \$2,500 and up to \$5,000 ; 1^ per cent on \$5,000 and over, up to \$7,50.0 ; 2 per cent on \$7,500 and over, up to \$10,000 ; 2| per cent on \$10,000 and over, up to \$15,000; 3 per cent on \$15,000 and over; and a like tax shall be assessed, levied, and collected annually upon the gains, profits, and income from all property owned, and every business, trade, or profession carried on in this state by persons residing without this state, excepting such corporations as are hereinafter excepted : Provided, that in estimating the gains, profits, and income there shall not be included interest upon such bonds or securities of this state, or of the United States, the principal and interest of which are, by the law of their issue, exempt from taxation.

"Sec. 326. In computing incomes, the necessary expenses

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actually incurred in carrying on any business, occupation, or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family, shall be deducted from the gross income or revenue; and the word 'income,' as used in this article, shall be deemed and taken to mean 'gross profits:' Provided, that no deduction shall be made or allowed for any amount paid out or contracted for permanent improvements or betterment made to increase the value of any property, or estate, or for the increase of capital, capital stock, or assets."

Section 327 defines the words "citizen" and "person," as used in the act, as including all natural persons, copartners, and members of any incorporated association, and as excluding all corporations chartered by the laws of the United States or of this or any other state. Section 328 provides that the taxes shall be levied and collected at the same time and in the same manner and by the same officers as other taxes, and that they shall be paid into the state treasury, as other general state taxes. Sections 329 and 330 provide for the time and manner of making returns, and penalties for failure to make returns, and for making wilfully fraudulent returns, and also that "the tax and the additions thereto as a penalty [are] to be assessed and collected in the manner provided for in the case of failure to make returns or lists of personal property." Section 331 is as follows: "In every respect not herein specified, the returns for and the levy and collection of the tax provided in this article shall be subject to all the provisions of law relative to the assessment and collection of taxes on personal property."

As one of the objections to the act is that it takes plaintiff's property "without due process of law," we state briefly, but substantially, the method of procedure in ordinary cases, required by the statutes of this state relative to the assessment and collection of taxes on personal property, which, by the terms of the income tax act, are made applicable to the assessment and collection of taxes thereunder. Between the 1st of January and the 20th of February in every year all persons are required to make a statement of return, on oath, to the county auditor of all such property, giving its value. The returns for each tax district are subsequently submitted to and passed upon by a board of assessors appointed for such district, who are sworn

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to fairly and impartially assess the value of such property. If the board increases the aggregate valuation put upon his property by the taxpayer by as much as \$100, notice must be given to the taxpayer, and he has the right of appeal to the county

board of equalization, which is composed of the chairman of the boards of assessors for the several tax districts in the county, who are sworn fairly and impartially to discharge the duties imposed upon them by law. They hear all grievances and appeals from the valuations and assessments made by the boards of assessors, and may take testimony in regard to the same. If they raise the valuation of any property, the owner must be notified. If the taxpayer cannot get relief from the board of equalization, he has the right of appeal to the comptroller general, to whom all the testimony relative to each grievance must be forwarded, and he acts thereupon. After the assessments are fixed, the taxes, if not paid within the time prescribed by law, are collected by distress or by execution. If a taxpayer conceives that a tax assessed against him is unjust or illegal for any cause, he may pay the same under protest, and bring his action against the treasurer in the court of common pleas to recover it back. Under that provision of the law, this action was brought.

That provision of the 14th Amendment to the Constitution of the United States, which it is claimed this act violates, reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 5, art. 1, of the Constitution of this state is to the same effect, and in nearly the same words. The rights guaranteed by these constitutional provisions have been the subject of frequent judicial consideration. The courts have not attempted to give a definition of the meaning of the words "due process of law" so as to cover all possible cases, nor have they undertaken to say what would or would not, under all circumstances, satisfy the guaranty of "the equal protection of the laws," but have generally been content to proceed by the process of inclusion and exclusion in ascertaining their intent and meaning, and their application to the facts of each case as it is presented for decision, and with giving the reasons upon which the decision is rested.

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The claim that the act deprives the plaintiff of his property without due process of law, and denies him the equal protection of the laws, raises questions under the Federal Constitution, upon which the decisions of the Supreme Court of the United States are authoritative and controlling. In solving these questions we must therefore be guided by the decisions of that court.

In the Kentucky E. Tax Cases, 115 U. S. 321, 29 L. ed. 414, 6 Sup. Ct. Eep. 57, the court considered a statute of the state of Kentucky, which involved both these constitutional guaranties. Upon the question of what is due process of law in the matter of levying and collecting taxes, the court, by Mr. Justice Matthews, said: "It has, however, been repeatedly decided by this court that the proceedings to raise the public revenue by

levying and collecting taxes are not necessarily judicial, and that 'due process of law,' as applied to that subject, does not imply or require the right to such notice and hearing as are considered to be essential to the validity of the proceedings and judgments of judicial tribunals. Notice by statute is generally the only notice given, and that has been held sufficient. 'In judging what is "due process of law," ' said Mr. Justice Bradley, in *Davidson v. ISTew Orleans*, 96 U. S. 97, 107, 24 L. ed. 616, 620, 'respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain, or the power of assessment for local improvements, or none of these ; and, if found to be suitable or admissible in the special case, it will be adjudged to be "due process of law," but if found to be arbitrary, oppressive, and unjust, it may be declared to be not "due process of law." ' In its application to proceedings for the levy and collection of taxes, it was said in *McMillen v. Anderson*, 95 U. S. 37, 42, 24 L. ed. 335, 336, that it 'is not and never has been, considered necessary to the validity of a tax * * * that the party charged should have been present or had an opportunity to be present, in some tribunal when he was assessed.' This language, it is true, was used in the decision of a case in reference to a license tax, where all the circumstances of its assessment were declared by statute, and nothing was intrusted to the discretion of public officers; but in the *State K. Tax Cases*, 92 U. S. 575, 610, 23 L. ed. 663, 672, where the ascertainment of the taxable value of railroads was the duty of a board, as in the present cases, whose

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assessment was challenged for the reason that the proceeding was not 'due process of law' for want of notice and a hearing, it was said by Mr. Justice Miller, delivering the opinion of the court: 'This board has its time of sitting fixed by law. Its sessions are not secret. 'No obstruction exists to the appearance of anyone before it to assert a right or redress a wrong; and in the business of assessing taxes, this is all that can be reasonably asked.' " See also *Cass Farm Co. v. Detroit*, 181 U. S. 396, 45 L. ed. 914, 21 Sup. Ct. Eep. 644.

Upon the guaranty of the equal protection of the laws the same court, speaking through Mr. Justice Bradley, in *Bell's-Gap R. Co. V. Pennsylvania*, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Eep. 533, said: "The provision in the 14th Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches,, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades^ and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may

allow deductions for indebtedness, or not allow them. All! such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are safe in saying that the 14th Amendment was not intended to compel the state to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the states whose object is to secure

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equality of taxation, and which are usually accompanied with -qualifications deemed material, but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice, -and which every. state, in one form or another, deems it expedient to adopt."

In *Magoun v. Illinois Trust & Sav. Bank*, 170 U. S. 283, 42 L. ed. 1037, 18 Sup. Ct. Rep. 594, the constitutionality of a statute of the state of Illinois was affirmed. The statute imposed a graduated tax on legacies and inheritances, and divided the beneficiaries into three classes; the first and second being composed of lineal and collateral relations of the decedent, and the third being composed of more distant relatives and strangers. On the first class a tax of 1 per cent was imposed on all sums in excess of \$2,000; on the second, 2 per cent on all sums in excess of \$2,000 ; and on the third, 3 per cent on all sums over \$500 and less than \$10,000, increasing 1 per cent on each succeeding \$10,000 up to \$50,000, above which amount it was 6 per cent. The act was attacked on the ground that it denied to the plaintiff the equal protection of the laws. In disposing of the question, the court said: "What satisfies this equality [equal protection of the laws] has not been, and probably never can be, precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." The right of the legislature of the state to make reasonable classifications of persons and property for

public purposes has been so often affirmed by the courts that it can no longer be questioned. If the classification is not arbitrary, — that is, if it bears reasonable relation to the purposes to be effected, — and if the constituents of each class are all treated alike, under similar circumstances and conditions, the rule of equality is satisfied.

It is contended by appellant that this act violates the provisions of § 1, art. 10, of the Constitution of this state, which requires the legislature to provide for a uniform and equal rate of assessment and taxation, and prescribe regulations to secure a just valuation for taxation for all property. The section,

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however, has this important proviso: "That the general assembly may provide for a graduated tax on incomes." These provisions must be construed together, and by the proviso taxes on incomes are excepted from the requirement of a uniform and equal rate of assessment and taxation of all property; for it is impossible to conceive how a tax on incomes could be graduated without exempting some incomes, or without making the tax higher on some than on others. If the tax is so graded, those paying the lower tax are exempted to the extent of the difference. The determination of the amount of income that shall be wholly exempted, and the method and ratio of graduation, were left by the Constitution to the discretion of the legislature, and with the exercise of that discretion the courts have no concern. Necessarily the exercise of such a discretion must to some extent be arbitrary.

The next objection to the act is that it results in double taxation. The contention is that plaintiff's income was derived from dividends received upon his stock in corporations chartered and doing business under the laws of the state, and as these corporations had paid taxes on their property, and also on their franchises, a tax on plaintiff's income is double taxation. There is much room for discussion and difference of opinion as to what really amounts to double taxation. But the weight of authority and reason sustains the taxation of shares of stock in a corporation to the holder thereof, notwithstanding the corporation has paid taxes on its property and also on its franchises. The rents and profits derived from real estate, and the products of the farm, may be taxed, though the land from which they are derived has also been taxed. The profits of a business may be taxed, though the property in the business, bought on credit, has been taxed to the owner, and the debt he owes therefor has been taxed to the creditor, and the property covered by mortgage may be taxed to the owner, and the mortgage thereon to the mortgagee. Cooley, Taxn. 3d ed. 387 et seq. These may be instances of double taxation in one sense, yet they are not. within the rule of uniformity and equality prescribed by the Constitution, which forbids the taxation twice of the same property for the same purpose, while other property, under similar circumstances and conditions, is taxed only once. There is no

constitutional inhibition against such taxation ; and in the ab-

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sence of constitutional restriction, the power of the legislature to tax is limited only by its own discretion and its responsibility to its constituents. It has been said the power to tax is an inherent right of sovereignty necessary to its existence, and limited only by its necessities. Judge Oooley, in his work on Taxation, at' page 392, says: "We make out, therefore, no conclusive case against a tax when we show that it reaches twice the same property for the same purpose. This may have been intended, and, in many cases at least, is admissible."

Next, it is alleged that the act violates § 2, art. 10, of the Constitution of this state, which declares: "The general assembly shall provide for an annual tax sufficient to defray the estimated expenses of the state for each year," - in that it attempts to provide for taxation for more than one year, regardless of the estimated expenses of the state for years in which the same is to be collected. This is merely an assumption on the part of the appellant. By the terms of the statute the tax is levied annually, and is applied to the expense of the state in the year in which it is collected. We are bound to assume that, in estimating the annual expenses of the state, the legislature takes into consideration all the sources of income to the state, including the income tax, and fixes the general levy accordingly.

It is also contended that the act violates § 3, art. 10, of the Constitution, which provides: "No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, to which object the tax shall be applied." The title of the act (22 Stat, at L. p. 529) is: "An Act To Eaise Kevenue for the Support of the State Government by the Levy and Collection of a Tax on Income." That is certainly a distinct statement of the object to which the tax shall be applied.

The last point made is that the act was repealed by the supply act of 1905. Section 5 of that act requires the auditors and treasurers of the several counties to collect the taxes levied under and in pursuance of its provisions, and forbids their collecting any other tax whatsoever, except, amongst others, "such special tax or collection as is authorized under any act or joint resolution of the general assembly." It seems to us the exception clearly covers the income tax. But it is argued that this is not a special tax. We think it is. The word "special" is defined in the Standard Dictionary as "having in a peculiar and

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distinguishing degree some characteristic or characteristics ; out of the ordinary." It seems, from the numerous objections urged by plaintiff against this tax, that he at least considers it "out

of the ordinary," and as "having in a peculiar and distinguishing degree some characteristics" of a very objectionable nature. But there are no express words of repeal in the supply act, and there is certainly no necessary implication of such an intention on the part of the legislature. On the contrary the same provision will be found in each supply act since the passage of the income tax act, and, notwithstanding that provision, the income tax act was incorporated in the Code of 1902, and was amended in 1905 by repealing the 8th section of the original act. This clearly shows that the legislature did not intend by that provision in the general supply act to repeal the income tax act

Judgment affirmed.

SUPREME COURT OF WISCONSIN.

STATE EX EEL. BOLENS v. FREAE, Secretary of State,

et al.

WINDING et al. v. SAME.

[148 Wis. 456, 134 N. W. 673.]

1. The courts of Wisconsin can restrain public officers from enforcing an unconstitutional law which invades private or public rights.
2. The Supreme Court of Wisconsin has original jurisdiction of a suit for an injunction when a State officer is about to perform an official act materially affecting the interests of the people at large, which is contrary to law, or is imposed on him by the terms of an unconstitutional law - statute.
3. The Supreme Court of Wisconsin will not take original jurisdiction:
 - (1) In a case which although involving a question publici juris if local in its effect, unless the remedy in the lower courts is lacking or is absolutely inadequate.

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- (2) In a case involving a mere private interest or one whose primary purpose is to redress a private wrong.
4. A case will not be dismissed because there is a private interest involved with the public interest, provided the private interest be incidental merely, and the vindication of the public right be the primary purpose of the action.

5. An action involving a private as well as a public interest will not be dismissed merely because the private interest may drop out, provided the public and private interests be severable and the public interest still exists.

6. The Constitution has not given the State circuit court the power to use the writ of injunction as a prerogative jurisdictional writ, as it has been given to the Supreme Court, hence such circuit court has not the power in an action not brought by the Attorney-General, but on the relation of a private citizen only, to use the writ for prerogative purposes.

7. A taxpayer's action is to restrain the illegal use or squandering of municipal funds, being for the benefit of a limited class of citizens, and not to vindicate the rights of the whole people, is not within the original jurisdiction of the Supreme Court.

8. Where a State statute (Wis. Laws 1911, ch. 658) imposing an income tax, made an important change in the tax policy of the State, and was intended to supplant the taxation of personal property previously existing and to provide an income tax in lieu thereof, and such act was claimed to be unconstitutional, the claim involved the interests of the whole people of the State, and authorized the Supreme Court, at the instance of a private relator, to take original jurisdiction to restrain, until the constitutionality thereof has been determined, the officers of the State, charged with the enforcement of such law, from taking steps to enforce the same, and from expending State funds in such enforcement.

9. Constr. art. 13, § 9, provided that the rule of taxation shall be uniform, and taxes may be levied on such property as the legislature may prescribe. This was amended in 1908 by adding a provision that taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated and progressive. Held, that such amendment expressly authorized income taxation of a progressive character, in addition to taxation of property, and that taxation of income derived from property was not the same as taxation of the property itself, and that consequently Laws 1911, c. 658, was not unconstitutional in taxing real property, and also the rents derived therefrom as imposing double taxation.

10. The equality clause of the Fourteenth Amendment of the Federal Constitution did not impose upon the States an unbending rule of equal taxation, the states being authorized to make exemptions, levy different rates on different classes, tax such property and make such deductions as they choose, then provisions to that end proceeding

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within reasonable limits and general usage being valid so long as they are within their own constitutions.

11. The Wisconsin statute (Laws 1911, ch. 658) in so far as it pro-

vided a progressive rate of taxation on incomes, according to the size of the income, was not unconstitutional as depriving taxpayers of the equal protection of the laws.

12. The partial invalidity of a separable provision of a State statute does not invalidate the entire act, where it does not appear that the Legislature would not have passed the act, without the invalid provision, had it been advised of its unconstitutionality.

13. The Wisconsin income tax act (Laws 1911, ch. 658), in so far as it permits the board of review to increase the assessments of a non-resident without notice; while requiring notice to be given to a resident, is not in violation of Constitution U. S. art. 4, § 2, providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.

14. The Wisconsin Constitution (Art. 13, § 9) provides that all county officers whose election or appointment is not provided for by the Constitution shall be elected by the electors or appointed by the proper county authorities, as the Legislature shall direct, that all city, town, and village officers whose election or appointment is not provided for, by the Constitution shall be elected by the electors of the proper municipality or appointed by such municipal authorities as the legislature may designate; that all other officers whose offices may thereafter be created by law shall be elected by the people, or appointed as the Legislature may direct. Held, that the office of assessor of incomes created by Laws 1911, ch. 638, was a new office within the fourth class, the election or appointment to which could be provided for in any way that the Legislature in its discretion, might direct, and hence that so much of the statute as provided for the appointment of such assessors by the State Tax Commission was not invalid as violating the constitutional guaranties of local self-government.

15. The Wisconsin statute (Laws 1911, ch. 658) providing for the imposition of an income tax was not unconstitutional as a delegation of the legislative power in so far as it authorized the State Tax Commission to appoint income tax assessors, and authorized the commission to fix their salaries.

16. There being a sufficient ground for classification between individuals and partnerships in the imposition of the tax on incomes by Wisconsin Laws of 1911, ch. 658, the statute was not invalid as an unjust discrimination against partnerships, although exemptions allowed to individuals are denied to partnerships therein.

17. Since the term "income" may be properly defined as that which comes in to a person as payment for labor, or services rendered in some office, or as gain from lands, business, the investment of capital, &c., so much of the Wisconsin Act (Laws 1911, ch. 658) imposing a tax on incomes, as provides that the estimated rental of residence properly

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occupied by the owner, should be considered as income, is not invalid on the theory that, as it was not income in the strict sense of the term,

it can not be made such by a legislative fiat.

18. There being a proper ground for distinction in the taxation of incomes between families living together and unmarried persons, or persons, though married, living separately, so much of the Wisconsin Act

(Laws 1911, ch. 658), as provided that the income of a wife living with her husband should be added to the income of the husband, and the income of children under eighteen living with their parents should be added to that of the parent, or parents, and only one exemption should be allowed, was not objectionable as discriminatory.

19. The statute, although not adopted until July 15, 1911, providing for the imposition of the Wisconsin income tax, was not retroactive because it assessed incomes received during the year 1911, nor because it included the profits derived from the sale of property bought at any time within three years previously.

20. There being a reasonable basis for classification in the taxation of incomes between individuals and corporations, the Wisconsin statute (Laws 1911, ch. 658) was not invalid as creating an unjust discrimination, although it provided a rate of taxation for the incomes of corporations different from that prescribed for individuals.

21. A statute imposing an income tax is not invalid in toto because it does not specifically except national banks, nor the salaries of officers which are not taxable under the Constitution; and if national banks or public officers can not constitutionally be subjected to the tax, the law will be construed as not applying to them.

(Jan. 9, 1912.)

The first case was an original suit by the State, on relation of Harry W. Bolens, against James A. Frear, Secretary of State, and others, to restrain them, as state officers, from enforcing the income tax law (Wisconsin Laws 1911, c. 658). It was heard upon a demurrer to the complaint. The second case was an appeal from a judgment in an action in the circuit court by Arthur Winding and others against the same defendants, in which a demurrer to the complaint was sustained.

For the relator, Bolens, there was a brief by Messrs. Carpenter & Poss, and oral argument by Mr. Benjamin Pass.

For the appellants Winding and others there was a brief by Messrs. Flanders, Bottum, Fawsett & Bottum, attorneys, and a separate brief by Mr. Geo. D. Van Dyke, of counsel, and oral argument by Messrs. J. G. Flanders, C. F. Fawsett, and Geo. D. Van Dyke.

For the defendants and respondents there was a brief by the Attorney General and Mr. Russell Jackson, deputy attorney gen-

eral ; a separate brief by Mr. / . E. Dodge, special counsel for the state ; separate briefs by Mr. Geo. G. Greene, counsel ; and oral argument by Mr. Jachson, Mr. Dodge, and Mr. Greene.

Briefs were also filed by the following attorneys as amici curiae.

Messrs. F. C. Winkler; Miller, Mack & Fairchild; David S. Weggj Lines, Spooner, Ellis & Quarles; and Oscar M. Fritz.

WINSLOW, Ch. J., delivered the opinion of the court:

These are actions in equity brought for the purpose of enjoining the secretary of state and other state officers, including the tax commission, from paying out any state moneys, or doing any other administrative acts, in the enforcement of the newly passed income tax law of this state, known as chapter 658, Laws of 1911, on the ground that said act is unconstitutional.

The Bolens action is an action sought to be brought within the original jurisdiction of this court, after refusal by the attorney general to bring it. This court, upon application for leave to bring the action upon the relation of Bolens (a taxpayer), granted such leave, but expressly provided in the order that the question whether such action was an action properly within the original jurisdiction of this court should be reserved and argued with the demurrer upon the merits. The Winding Case is an action originally brought in the circuit court for Dane county by various persons and corporations who claim that they will be injuriously affected in various different ways by the provisions of the law. A demurrer on the three grounds of want of jurisdiction, want of legal capacity to sue, and insufficiency of facts having been sustained by the circuit court, the plaintiffs appeal to this court, and all the cases were argued together; briefs being also filed by several members of the bar as amici curiae.

The law which is attacked in these actions adds thirty sections to the statutes, and also makes very substantial changes by amendment and repeal in §§ 1036 and 1038 of the existing statutes, relating to the taxation of personal property. The first section of the law is numbered 1087m - 1, and provides generally for the taxation of all incomes received during the year 1911, and annually thereafter.

Section 1087m - 2 provides:

(1) That the term "person," as used in the act, shall include

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"any individual, firm, copartnership, and every corporation, joint-stock company, or association organized for profit and having a capital stock represented by shares," unless otherwise stated.

(2) That the term "income" shall include:

a. All rent of real estate, including estimated rental of residence property occupied by the owner.

b. Interest on loans or evidences of debt of any kind.

c. Wages, salaries, or fees derived from services, provided that salaries of public officers are not to be included in those cases where the taxation thereof would be repugnant to the Constitution.

d. All dividends or profits from stock, or from the purchase and sale of any property acquired within three years previously, or from any business whatever.

e. Royalties derived from the possession or use of franchises or legalized privileges of any kind.

f. All other income from any source, except such as is exempted by the act.

(3) That "the tax shall be assessed, levied, and collected upon all income, not hereinafter exempted, received by every person residing within the state, and by every nonresident of the state upon such income as is derived from sources within the state or within its jurisdiction. So much of the income of any person residing within the state as is derived from rentals, stocks, bonds, securities, or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or without the state ; provided that any person engaged in business within and without the state shall, with respect to income other than that derived from rentals, stocks, bonds, securities, or evidences of indebtedness, be taxed only upon that proportion of such income as is derived from business transacted and property located within the state, which shall be determined in the manner specified in subdivision (e) of § 1770b, as far as applicable."

Section 1087m - 3 provides, in substance, for the following deductions by corporations and joint-stock companies:

a. Sums paid within the year for personal services of all

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ofRcera and employees actually employed in the production of the income.

b. Other ordinary and necessary expenses paid within the year in the maintenance and operation of its business and property, including reasonable depreciation of the property from which the income is derived. All bonds issued by a corporation shall be deemed an interest in the property and business of the corporation, and so much of the interest on the bonds as is represented by the ratio of the total property located and business transacted in the state to the whole property and business of the corporation as provided in subdivision 3 of 1087m - 2 shall be subject to taxation at the same rate as the income, and shall be assessed to the bondholders under the general designation of "the bondholders of" the particular corporation on the property of the corporation prior to other liens, and, unless paid by the bondholders, shall be enforced against the corporation, which may deduct the amount of the tax from the next interest payment on the bonds.

c. Losses sustained during the year not compensated for by insurance or otherwise.

d. Sums paid within the year for taxes imposed by any other state upon the source from which the income taxed by this act is derived.

e. Dividends or income received during the year from stocks or interest in any firm, corporation, or joint-stock company, the income of which has been assessed under this act.

f. Interest received from bonds or securities exempt from taxation under United States laws.

By § 1087m - 4 it is provided, in substance, that persons other than corporations and joint-stock companies shall be allowed the following deductions :

a. Ordinary and necessary expenses actually paid in carrying on the business from which the income is derived, including a reasonable allowance for depreciation in the property from which the income is derived.

b. Losses during the year not compensated by insurance or otherwise.

c. Dividends or incomes from stocks or interest in any firm

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or corporation, the income of which has been assessed under

this act.

- d. Interest paid during the year on existing indebtedness.
- e. Interest on bonds or securities exempt under United States laws.
- f. Salaries received from the United States by United States officials.
- g. Pensions received from the United States.
- h. Taxes (other than inheritance taxes) paid during the year on the property or business from which the income is derived.
- i. Devises, bequests, or inheritances received during the year upon which an inheritance tax has been paid.
- j. Life insurance to the amount of \$10,000 received by persons legally dependent on the decedent.

Section 1087m - 5 provides in substance for the following exemptions :

- (1) a. To an individual, \$800.
 - b. To husband and wife, \$1,200.
 - c. !For each child under eighteen years, \$200.
 - d. For each additional person legally and wholly dependent on the taxpayer for support, \$200.
 - e. These exemptions do not apply to non-residents, nor to firms, corporations, or joint-stock companies. In computing such exemptions and the amounts of taxes payable under § 1087m - 7, the income of a wife living with her husband shall be added to the husband's, and the income of each child living with its parent or parents shall be added to the parents' income.
- (2) Income of mutual, savings, or loan and building associations, and of any religious, scientific, educational, benevolent, or other association not organized or conducted for pecuniary profit.
 - (3) Income from property and privileges by persons now required to pay taxes or license fees into the state treasury in lieu of taxes. Such persons shall continue to pay taxes and license fees as heretofore.
 - (4) Income received 'by the United States, the state, and all counties, cities, villages, school districts, or other political units of the state.

Section 1087m - 6 provides, in substance, that the tax, after

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making such deductions and exemptions, shall be computed at the following rates :

(1) a. On first \$1,000 or part thereof, 1%

life

n%

11%

2%

H%

3%

b.

second "

c.

third "

d.

fourth "

e.

fifth

f.

sixth "

g-

seventh "

h.

eighth "

i.

ninth "

j•

tenth "

k.

eleventh "

l.

a

twelfth "

4: %

6 %

On any sum exceeding \$12,000, 6 %

(2) Provided that the tax on corporations and joint-stock companies (after deductions) shall be computed as follows:

a. If the income equals 1 per cent or less of assessed value of property used in acquiring the income, the rate shall be [^] of 1 per cent of such income.

b. If the income equals more than 1 but not more than 3 per cent of such value, 1 per cent of the income.

c. If more than 2, but not more than 3, per cent, 1[^] per cent of the income.

d. If more than 3, but not more than 4, per cent, 2 per cent of the income.

e. If more than 4, but not more than 5, per cent, 2[^] per cent of the income.

f. If more than 5, but not more than 6, per cent, 3 per cent of the income.

g. In like manner the tax shall increase at the rate of ^{-J} of 1 per cent for each additional 1 per cent or fraction thereof which the taxable income bears to the property employed in the acquisition of the income, until the rate of profits equals 12 per cent of property employed in the acquisition of the income, when such rate shall continue as a proportional rate of 6 per cent of such taxable income.

Section 1087m - 7 provides as follows: "The legislature intends subs. 2 of § 1087m - 6 of this act to be a separate part thereof, so that said subsection may fail or be declared invalid

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without adversely affecting any other part of the act ; provided that, in event of its failing or being declared invalid, the incomes of corporations, joint-stock companies, and associations, shall be subject and shall be construed to have been subject to taxation at the rates specified in subs. 1 of § 1087m - 6, and said incomes shall be reassessed by the Tax Commission and

taxed for the years for which the rates provided in subs. 2 of § 1087m- 6 shall have failed."

The next fourteen sections of the act are administrative purely. By their terms the enforcement of the act is placed in the hands of the state tax commission, which is authorized and required to divide the state into taxing districts, and appoint an assessor of incomes in each district. The manner in which incomes are to be assessed and the taxes are to be collected is fully provided for, but it is not necessary to insert the provisions here, as no question is raised upon the details of these provisions.

Section 1087m - 22 provides, in substance, that the place at which the income tax shall be assessed, levied, and collected shall be determined as follows :

(1) Persons deriving income from within and without the state, or from two or more political subdivisions of the state, shall report the parts so separately derived in separate accounts in such form as the tax commission may prescribe.

(2) The entire taxable income of a resident of the state shall be combined for purpose of determining exemptions and rate of tax, but the taxes shall be paid to the several towns, cities, and villages in proportion to the income derived from each, counting the income derived from without the state as derived from the town or city of the taxpayer's residence.

(3) The income of nonresidents derived from sources within the state shall be separately assessed and taxed in the town, city, or village from which it is derived.

(4) All laws not in conflict with this act, regulating time, place, and manner of collecting unpaid personal property taxes, shall apply to the income tax.

Section 1087m - 23 provides that the revenue derived from the income tax shall be divided - 10 per cent to the state, 20 per cent to the county, and 70 per cent to the town, city, or village in which it is assessed, levied, and collected.

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Section 1087m - 2j'5 abolishes the office of county supervisor of assessment on and after the first Monday in January, 1912, and provides that the county supervisor of incomes shall, after that date, perform all the duties imposed by law upon the county supervisor of assessment.

Section 1087m- 26 provides that any person paying a tax on personal property during any year may present his receipt therefor, and have the same accepted by the tax collector to its full amount in payment of income tax during said year, and that any bank paying taxes upon the shares of its individual stockholders may present the receipt therefor, and have the same accepted in payment of taxes upon the income of the bank during that year.

Section 1087m - 27 provides that nothing in the act shall affect in any way the taxes for the year 1911 or the collection or enforcement thereof.

By the amendment to § 1036 of the Statutes of 1898 there is taken out of the items of personal property subject to taxation *'all debts due from solvent debtors, v^hether on account, note, contract, bond, mortgage, or other security, or v^hether such debts are due or to become due," also "moneys," and by the amendment to subdivision 10 of § 1038, Stat. 1898, the following property is made exempt from taxation: "All moneys, all debts due or to become due to any person, and all stocks and bonds not otherwise specially provided for."

By the concluding sections of the act certain other changes are made in exemptions from taxation, which have the effect of somewhat enlarging such exemptions, especially in the line of personal ornaments and belongings and agricultural implements, but the details of these changes are not necessary to be stated.

At the inception of the Bolens Case, the question of jurisdiction is sharply raised ; and it is very strongly argued, especially in a brief filed by General F. C. Winkler, that this is not a case properly within the original jurisdiction of this court, as that jurisdiction has been defined and limited by the cases commencing with the Railroad Cases in 35 Wis. 425.

The argument, in brief, is that the action is nothing more nor less than a taxpayer's action ; that such actions may properly be entertained in the case of illegal expenditures by cities,

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counties, villages, or other municipalities, but cannot properly be brought against state officers, because, in effect, they are actions against the state, and the state cannot be sued without its consent. This objection might perhaps be summarily disposed of by a brief reference to the case of State ex rel. Raymer V. Cunningham, 82 Wis. 39, 51 IST. W. 1133, where a case of similar character, brought on the relation of a taxpayer, was «ntertained and decided upon the merits against objection to the jurisdiction, and by further reference to the cases of State ex Tel. Garrett v. Froehlich, 118 Wis. 129, at page 143, 61 L.E.A. 345, 99 Am. St. Eep. 985, 94 N. W. 50; State ex rel. Rosen-

hein v. Frear, 138 Wis. 173, 119 IST. W. 894, and Re Filer & S. Co. 146 Wis. 629, 132 K W. 584, in each of which cases the right to maintain similar actions in this court is either impliedly or expressly asserted.

We do not feel, however, that we ought to dispose of this very important question without thoroughly examining it for several quite persuasive reasons. Reference to the cases just cited will show that the question never has been discussed in any opinion. In the Raymer Case, which is the first of the series and which was a case brought on the relation of a taxpayer to enjoin the payment of money to the state superintendent of public instruction, under a law which violated an express constitutional prohibition, it was said, in substance, that it was held in the case of State ex rel. Atty. Gen. v. Cunningham, 81 Wis, 440, 15 L.R.A. 561, 51 N. W. 724, that such an action was within the original jurisdiction of this court, and would be entertained. It is very clear that the Cunningham Case was not such a case, and involved very different considerations. The Cunningham Case was an action brought on the relation of the attorney general to enjoin the secretary of state from giving election notices under an apportionment law which was held to deprive a very large number of the voters of the state of political rights guaranteed to them by the Constitution. This was held to be an invasion of the liberties of the people, and hence the case came clearly within the original jurisdiction of this court as laid down in the Railroad Cases. No question of the wrongful expenditure of state funds, nor of a taxpayer's right to invoke the original jurisdiction of this court to prevent such expenditure, was involved or mentioned in the case.

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No discussion of the question appears in the other cases cited, so it seems clear that the court has not yet taken up and considered the question as an original one.

It has been spoken of as a very important question, and advisedly so spoken of. Laws which are framed to meet and correct some existing situation deemed by the legislature to be undesirable will generally, or at least frequently, involve the expenditure of some money in their enforcement. If, whenever such a law is passed, it is within the power of any taxpayer, however paltry his contribution • to the public funds, to come into this court and invoke its original jurisdiction, and compel it to pass upon the validity of the law, it is not difficult to forecast the result. Every important law will be adverse to the interests of some taxpayers, and with such a principle established this court stands in great danger of becoming to all intents and purposes a third chamber of the legislature not named in the Constitution, but exercising a veto power over the other houses when invoked by any taxpayer. The power to pass upon the constitutionality of laws when the question arises in the course of ordinary litigation is a great power, one to be exercised with the greatest possible caution and wisdom, but the power to

take up and pass upon a law involving the expenditure of any state funds as soon as it is passed at the suggestion of any taxpayer, and place a judicial veto upon its execution, is a still greater one. No higher power than this can well be conceived in a government such as ours, certainly no power will demand greater wisdom in its exercise, if it exist.

This court has unquestionably taken the position in a number of well-considered cases that the courts can and will restrain public officers from enforcing an unconstitutional law which invades private or public rights. State ex rel. Atty. Gen. v. Cunningham, 81 Wis. 440, 15 L.R.A. 561, 51 K W. 724; State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.K.A. 145, 35 Am. St. Eep. 27, 53 N. W. 35 ; Bennett v. Vallier, 136 AVis. 193, 17 L.K.A. (]Sr.S.) 486, 128 Am. St. Eep. 1061, 116 W. W. 885; Wadhams Oil Co. v. Tracy, 141 Wis. 150, 123 ISr. W. 785, 18 Ann. Cas. 779. But this court has clearly recognized that this power is a delicate one, and to be used only with a wise discretion. It was said in the last case cited that "it will not do to make of the courts, by equitable interfer-

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«iice, a sort of a superior upper house to consider and pass, in general and particular as well, upon legislative enactments."

Concerning this power, Judge Dodge very rightly observes in his brief in the present case: "No higher power can be conceived than that of the judiciary to stay the action of the coordinate executive or legislature from an act or policy which the latter conscientiously believe to be constitutional and for public welfare. As the power is transcendent, its exercise must "be with caution and moderation; albeit with courage. The frequency of the attempts by individuals to invoke this power of veto invites the anxious consideration of the wisdom and propriety of its exercise in each case."

The question now before us is whether this court has consciously and advisedly held that it is sufficient to call for the exercise of this extreme power that a taxpayer come into court and demand that the public treasury be protected from the expenditure' of funds imder a law concerning whose constitutionality there may be doubt.

The consideration of this question has prompted us to make a re-examination of the entire question of the original jurisdiction of this court, and to make an attempt to classify the significant decisions upon the subject, in the hope that thereby the scope and purpose of that jurisdiction, as the court has endeavored to define and limit it, may be better understood. The results of this re-examination are now to be stated as briefly as may be.

The constitutional grant of jurisdiction to the supreme court (§3, art. 7, Wis. Const.), after providing that it shall have

appellate jurisdiction coextensive with the state, provides that it "shall have a general superintending control over all inferior courts ; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same."

Since the decision of the Railroad Cases, 35 Wis. 425, it has been very well understood that by this section of the Constitution three distinct and independent grants of power or jurisdiction were made to this court, viz.: (1) The appellate power; (2) the power of superintending control over inferior courts; and (3) the original jurisdiction to be exercised by

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means of the writs named in the section. We are only concerned here with the grant of original jurisdiction.

It will be at once noticed that this grant is practically unlimited in extent, except as it may be said to be limited by the scope of the writs named, and it is for this reason probably that (with the exception of the Blossom Case, 1 Wis. 317, to be referred to later) practically no attempt was made, prior to the decision in the Railroad Cases, to discuss the purpose or limits of the original jurisdiction. It was very frequently exercised, but plainly with no clear or logical idea of the purposes for which it was given to the court, unless possibly it may be said that there was the idea that the wrong to be redressed or prevented must be a wrong affecting the public, or some part of the public of a given locality or class, as distinguished from a wrong affecting individuals only.

Habeas corpus was so frequently used that the citation of the cases would be mere surplusage. Mandamus to compel official action by local or municipal officers was also very frequent. Thus the court entertained and decided upon the merits actions of mandamus to compel town assessors to reduce an assessment of personal property (*State ex rel. Ward v. Assessors*, 1 Wis. 345) ; to compel a circuit judge to hold court in a new county (*State ex rel. Powers v. Larrabee*, 1 Wis. 200) ; to compel county supervisors to strike property from the assessment roll (*State ex rel. Beebe v. LaFayette County*, 3 Wis. 816) ; to compel highway commissioners to act (*State ex rel. Doxtador v. Bailey*, 6 Wis. 291) ; to compel a school district clerk to make an official report to the town clerk (*State ex rel. School Dist. v. Eaton*, 11 Wis. 29) ; to compel county officers to locate their offices at a certain place as a means of testing the validity of county-seat elections (*Atty. Gen. v. Fitzpatrick*, 2 Wis. 542; *State ex rel. Cothren v. Lean*, 9 Wis. 279 ; *State ex rel. Spauld-*

ing v. El wood, 11 Wis. 17; State ex rel. Field v. Saxton, 11 Wis. 27; State ex rel. Gates v. Fetter, 12 Wis. 566) ; to compel town supervisors to audit damages allowed in laying out a highway (State ex rel. Van Vliet v. Wilson, 17 Wis. 687) ; to compel a city council to levy and collect a tax to pay a judgment or pay the expense of work done for the city (State ex rel. Soutter v. Madison, 15 Wis. 30 ; State ex rel. Christopher V. Portage, 12 Wis. 562, s. c. 14 Wis. 550; State ex rel. Carpen-

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ter V. Beloit, 20 Wis. 79; State ex rel. Hasbrouck v. Milwaukee, 25 Wis. 122) ; to compel a county board to admit one duly elected as a member to sit and act as such (State ex rel. Gill v. Milwaukee County, 21 Wis. 443) ; to compel the mayor of a city to appoint certain officers (State ex rel. Atty. Gen. V. O'Leiteill, 24 Wis. 149) ; to compel a city treasurer to deliver certain books to the county clerk (State ex rel. Saar V. Hundhausen, 26 Wis. 432) ; to compel the transfer of prisoners from the Milwaukee jail to the house of correction (State ex rel. Kennedy v. Brunst, 26 Wis. 412, 7 Am. Rep. 84) ; to compel county supervisors to erect county buildings (State ex rel. Park v. Portage County, 24 Wis. 49) ; to compel county supervisors to provide certain officials with office rooms (State ex rel. Keenan v. Milwaukee County, 25 Wis. 339) ; to compel the Milwaukee Chamber of Commerce to restore a member to his rights and franchises as a member (State ex rel. Graham v. Milwaukee Chamber of Commerce, 20 Wis. 63), and doubtless other cases may be found.

It should be noted in this connection that in one case (State ex rel. Board of Education v. Haben, 22 Wis. 101) the court declined to entertain an action of mandamus against the treasurer of a city to compel him to pay over the school moneys in his hands to the school board, giving as a reason that the remedy in the circuit court was ample. Judge Cole there states that the practice of applying to the supreme court for writs of mandamus against local officers was becoming very common, and that, in view of the increasing duties of the court, and in pursuance of a rule of court then recently adopted, it would be held in the future that "wherever there is anything in the application which shows that it would be unavailing if made at the proper circuit, or where from the nature of the questions involved it would seem necessary and proper that the suit be commenced in the supreme court, jurisdiction will be entertained ; otherwise it will not be, but parties will be required to make their application to the circuit court." This rule seems, however, to have been more honored in the breach than in the observance, as the cases just cited, which came up after the Haben Case, abundantly testify.

Quo warranto cases to try the title to public office, from that of governor down to school director, were very frequent. Thus

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the writ was used to try the title to the office of governor in State ex rel. Bashford v. Barstow, 4 Wis. 567; of district attorney in Atty. Gen. ex rel. Carpenter v. Ely, 4 Wis. 420 ; of treasurer of a city in State ex rel. Leach v. Von Baumbach, 12 Wis. 310; of school director in State ex rel. Law v. Perkins, 13 Wis. 411; of circuit judge in State ex rel. Atty. Gen. v. Messmore, 14 Wis. 115 ; of sheriff in State ex rel. Peacock v. Orvis, 20 Wis. 235 ; of justice of the peace in State ex rel. Holden V. Tierney, 23 Wis. 430 ; of supervisor in State ex rel. Peck V. Riordan, 24 Wis. 484 ; of superintendent of the poor in State Ex rel. Grundt v. Abert, 32 Wis. 403 ; of treasurer of an incorporated church benevolent association in State ex rel. Atty. Gen. V. Conklin, 34 Wis. 21 ; and there are numerous similar cases. As tending to explain the large number of these cases involving only small local offices, it should be noticed that by chapter 23 of the Session Laws of 1855 any person claiming to be entitled to hold "any public office" usurped by another was given the right to file in the supreme court an information in the nature of a quo warranto with or without the consent of the attorney general. While the Code of Pleading and Practice which was passed the following year (Laws 1866, chap. 120) entirely revised the practice in such cases, and contains no such sweeping provision, still resort seems to have been had to the supreme court in practically all cases of disputed title to office until the decision in the Railroad Cases.

Quo warranto to forfeit corporate charters for abuse or non-use of franchises was also brought in State v. Milwaukee Gaslight Co. 29 Wis. 454, 9 Am. Eep. 598, and in State v. West Wisconsin E. Co. 34 Wis. 197.

The foregoing citations by no means cover all of the cases in which the original jurisdiction was used prior to the Railroad Cases, but it is believed that they cover all that are of any significance, except the Blossom Case (which is to be soon considered), and it is also believed that they conclusively demonstrate that there was in the judicial mind during that period no serious thought that the original jurisdiction given to this court was intended to be or ought to be limited by excluding any particular class of cases therefrom, except probably cases involving mere individual wrongs, with which the public was in no manner concerned.

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Relating to this subject, Judge Dixon might well say, as he did in his brief in the case of Atty. Gen. v. Eau Claire, 37 Wis. 400, at page 411 : "It is not surprising that the court looked in vain to the bar for assistance in the argument of the Railway Cases, when we reflect that both court and bar had been wandering in utter darkness for a period of more than twenty-five years." It is very evident that Judge Dixon knew whereof

he spoke when he wrote these words. During fifteen years of the twenty-five he had been the leader of the wanderers.

It is quite plain, we think, that, however valuable the cases which we have thus briefly reviewed may be as authorities on the general propositions of law involved in them (and many of them are very valuable in this respect), they have absolutely no value on the question of the extent of the original jurisdiction of the court, for that question was never discussed or considered in any of them, and they have been gathered together here for the simple purpose of demonstrating their worthlessness as precedents upon that question, and to prevent either bench or bar from placing reliance upon them so far as that question is concerned in the future.

The case of *Atty. Gen. v. Blossom*, 1 Wis. 317, has not been included in the foregoing list because in that case, which was the first case where the original jurisdiction was challenged, there was an illuminating discussion in the opinion of Justice Smith, not only of the existence of any original jurisdiction in this court, but also of the purposes which were intended to be accomplished by the exercise of that jurisdiction. After meeting the contention that the court had only appellate jurisdiction, and demonstrating that the armory of common-law writs with which the Constitution endowed the court in the last clause of the section quoted were original in their functions, and necessarily implied the exercise of original jurisdiction, he used these pregnant words, remarkable in their strength and wisdom now, and vastly more remarkable when it is reflected that they were written nearly sixty years ago : "And, why was original jurisdiction given to the supreme court, of these high prerogative writs ? Because these are the very armor of sovereignty. Because they are designed for the very purpose of protecting the sovereignty and its ordained officers from invasion or intrusion, juid also to nerve its arm to protect its citizens in their liber-
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ties, and to guard its prerogatives and franchises against usurpation. The convention might well apprehend that it would never do to dissipate and scatter these elements of the state sovereignty among five, ten, twenty, or forty inferior tribunals, and wait their tardy progress through them to the supreme tribunal, upon whose decision must finally depend their efficacy. To preserve the liberties of the people, and to secure the rights of its citizens, the state must have the means of protecting itself." Here was clearly expressed the great idea that the original jurisdiction was given to this court in order that the state might use it to protect itself and its sovereignty and the liberties of the people at large.

Strange, indeed, it seems that this idea so forcibly expressed in 1853 should have been completely ignored and forgotten for more than twenty years thereafter, notwithstanding the fact

that applications for the exercise of that jurisdiction were increasing in number year by year. When, however, in 1874, the state, through its chief law officer, essayed to use the original jurisdiction for the purpose of curbing the great railroad companies of the state and compelling them to obey an act fixing rates of carriage for freight and passengers, the question of the extent of the jurisdiction was again sharply brought to the mind of the court, and it was philosophically discussed by Chief Justice Ryan in words which have ever since that time been regarded as authoritatively determining the attitude of this court upon the question. They have been often quoted and applied since that time, and are very familiar. In brief the principle there decided was that, in order to put in motion the original jurisdiction of this court, the question must not only be publici juris, - i. e., a question of public right, - ^but it must be a question "affecting the sovereignty of the state, its franchises, or prerogatives, or the liberties of its people." Atty. Gen. v. Chicago & N. W. E. Co. 35 Wis. 425.

In the case of Atty. Gen. v. Eau Claire, immediately following the Railroad Cases, 37 Wis. 400, where the attorney general invoked the original jurisdiction to restrain the alleged illegal obstruction of a navigable river flowing into the Mississippi, the same doctrine was announced and somewhat elaborated upon, especially with regard to the term publici juris. In this opinion it was said: "Of course, every question of mu-

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municipal taxation is publici juris; but it is equally so whether it be raised by a taxpayer, or by the municipality, or by the state. It is not enough to put in motion the original jurisdiction of this court that the question is publici juris. It should be a question quod ad statum reipublicw pertinet. . . . And, though the question did not arise in this case, it is quite evident from all that has any bearing on it in Atty. Gen. v. Chicago & IST. W. E. Co. that, to bring a case properly within the original jurisdiction of this court, it should involve in some way the general interest of the state at large. It is very true that the whole state has an interest in the good administration of every municipality ; so it has in the well-doing of every citizen. Cases may arise, to apply the words of C. J. Stow, geographically local, political not local ; local in conditions, but directly affecting the state at large. Cases may occur in which the good government of a public corporation, or the proper exercise of the franchise of a private corporation, or the security of an individual, may concern the prerogative of the state. The state lends the aid of its prerogative writs to public and private corporations and to citizens in all proper cases. But it would be

straining and distorting the notion of prerogative jurisdiction to apply it to every case of personal, corporate, or local right, where a prerogative writ so happens to afford an appropriate remedy. To warrant the assertion of original jurisdiction here, the interest of the state should be primary and proximate, not indirect or remote, peculiar perhaps to some subdivision of the state, but affecting the state at large in some of its prerogatives, raising a contingency requiring the interposition of this court to preserve the prerogatives and franchises of the state, in its sovereign character; this court judging of the contingency in each case for itself. For all else, though raising questions publici juris, ordinary remedies and ordinary jurisdictions are adequate. And only when, for some peculiar cause, these are inadequate, will the original jurisdiction of this court be exercised for protection of merely private or merely local rights. * * * It was suggested that we should establish general rules governing our original jurisdiction. That would be too bold an undertaking to venture on. Rules will arise, as cases come here, far more safely and properly than they could be prescribed in advance. We can now only declare the views which

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influence us in passing upon this motion. It is sufficient here to hold that proceedings to restrain municipal undertakings or municipal taxation in ordinary cases belong appropriately to the original jurisdiction of the circuit, and not of this court. These are questions publici juris as are title to local public office, performance of local official duty, use of local highways, maintenance of local public buildings, abuse of local power or franchise, and kindred local matters. But these are not generally questions directly involving the sovereign prerogative or the interest of the state at large, so as to call for the prerogative jurisdiction of this court. As a rule, no extraordinary jurisdiction is necessary or proper for them; the ordinary jurisdiction of the circuit court being ample. Practically it would be impossible to take jurisdiction of them all here; and we intend to assume jurisdiction of none of them which are not taken out of the rule by some exceptional cause. When they are governed by some peculiarity which brings them within the spirit and object of the original jurisdiction of this court, we will entertain them. Otherwise they will be left to the circuit courts. And this we understand to be the true spirit and order of the constitutional grant of jurisdiction." In this case also was laid down the general principle that, while jurisdiction would never be assumed to enforce a mere private right, still jurisdiction would not be refused because there might be a private relator in the case who possessed a private interest bound up with the public interest, if in fact there was the necessary public interest before defined; and that the court in rendering judgment in such a case would not ignore the private interest of the relator, but administer full relief; but, on the other hand, if the private right of a relator and the public right of the state met in the same litigation, the private right of the relator might entirely disappear, and the relator drop out,

but the court would still proceed and vindicate the public right, if there be a public right separable and distinct from the private right. This doctrine was more fully elaborated and stated in *State ex rel. Drake v. Doyle*, 40 Wis. 175, 22 Am. Eep. 692, which will be referred to later in this opinion.

The Railroad Cases and the Eau Claire Case, taken together, harmoniously following and more fully developing the great idea first announced in general terms by Judge Smith in the

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Blossom Case, may be truly said to have established the fundamental reason for the existence of the original jurisdiction of this court, and the limits within which, in view of that reason, the court would endeavor to confine its exercise. No attempt was made in either case to mark out or define in advance the particular questions or kinds of questions which would be considered as affecting the "sovereignty of the state, its franchises, or prerogatives, or the liberties of its people." Such an attempt would manifestly have been as unwise as it would have been futile. Human prescience is not equal to such a task. So the court wisely contended itself with announcing the general principle, leaving itself free to judge in each case whether the contingency which justified and required the use of the jurisdiction had arisen. Since the decision of those cases this court has faithfully endeavored to follow the general rules laid down in them. Numerous applications for the exercise of the original jurisdiction have been made, and of these many have been granted and some have been refused. The question of the application of the general rules aforesaid has arisen and been discussed and decided in a number of cases presenting widely different problems. Sufficient time has now elapsed so that it should be possible to draw from these decisions some general conclusions as to the limits of the jurisdiction as the court has administered it. If this can be done, it certainly ought to be helpful in the future administration of the jurisdiction, not because it will or can put up the bars so that no future case can be brought within the jurisdiction unless it has its prototype in the past, but because every discussion and ruling upon the question as a new case is presented should be helpful in developing some philosophical and orderly rules for the application of the general abstract principles laid down in the two cases last named to concrete cases as they arise in the future.

With this idea in mind, a brief review of the significant cases decided since the decisions in the Railroad Cases will now be undertaken, and an attempt will be made to classify them.

I. The most numerous cases probably are the habeas corpus cases, and they may well be first disposed of. The first of these cases where the question of the jurisdiction was discussed was the Pierce Case, 44 Wis. 411, where, in spite of the vigorous protest of Chief Justice Ryan, it was held that the state had

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SO vital an interest in the liberty of every one of its citizens that the question whether a citizen was unlawfully deprived of that liberty involved the interest of the public at large. The reasoning by which the unlawful imprisonment of a single citizen is held to involve the interests of the public at large, so as to justify the use of the original jurisdiction of the supreme court, may seem somewhat strained, but the decision has been followed without question in numerous cases since that time, and, furthermore, it is to be noticed that the legislation of the state from the earliest days of the state had provided for the issuance of the writ by any justice of the supreme court, and by chapter 45 of the Laws of 1864 had further provided that all applications for the writ on behalf of a person confined in the state prison must be made to the supreme court, or one of the justices thereof. This latter provision has remained upon the statute book ever since (§ 3409, Stat. Wis. 1898), and this court has held that it applies to applications made by persons confined upon conviction for felony in the Milwaukee House of Correction as well. State ex rel. Heiden v. Ryan, 99 Wis. 123, 74 K W. 544. It does not seem necessary or useful to cite the numerous habeas corpus cases which have been entertained by this court since the Pierce Case.

II. Next may be considered the quo warranto cases, and of these we have found but five cases which seem of any significance; namely. State ex rel. Wood v. Baker, 38 Wis. 41; Atty. Gen. v. West Wisconsin E. Co. 36 Wis. 467; State ex rel. Atty. Gen. v. Milwaukee, L. S. & W. R. Co. 45 Wis. 579; State ex rel. Eadl v. Shaughnessey, 86 Wis. 647, 57 N. W. 1105 ; Re Holland, 107 Wis. 178, 83 W. W. 319.

The first of these cases was brought to try the title to the office of county clerk, and it was held that contests concerning the title to county offices were not within the jurisdiction marked out for itself by the court in the Railroad Cases, but that because the title of the judge of the circuit court to the office of congressman depended on the same votes which were questioned in the case, and hence he could not with propriety sit. The case came within the exception suggested in the Eau Claire Case; namely, cases where the ordinary jurisdiction of the circuit is entirely inadequate. The evident meaning of this case is that contests over local offices will not be entertained

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unless the situation be such that the remedies in local courts are absolutely inadequate. It may well be doubted whether such a case as the Wood Case would now be entertained, in view of the ease with which, under present laws, another judge can be at once called in to try a case where the circuit judge is disqualified or declines to sit. The second and third cases named were actions brought to forfeit corporate charters granted by the state to railroad companies because of breach of duty on the part of the companies. They unquestionably fall within the jurisdiction as defined in the Railroad Cases, for in such an action the state is suing to punish the abuse or misuse of franchises granted by it in its sovereign capacity. In this connection it is pertinent to note that the legislature, by §§ 3240 et seq. of the statutes (Eev. Stat. 1878 and Stat. 1898), has for many years provided for actions in the name of the state to vacate corporate charters, which may be brought either in the supreme or circuit court, as this court may direct. See *State ex rel. Lederer v. International Invest. Co.* 88 "Wis. 512, 43 Am. St. Rep. 920, 60 IsT. W. 796. In the *Shaughnessey Case* it was sought to use the original jurisdiction of this court to try the title to the office of justice of the peace, and jurisdiction was declined on the ground that it was a local matter purely, which did not affect the state at large. For the same reason jurisdiction was declined in the *Holland Case*, in which it was sought to test the validity of the incorporation of a village.

III. Next may well be classed the two great cases of Atty. Gen. *V. Chicago & IST. W. E. Co.* 35 Wis. 425, and *Atty. Gen. v. Eau Claire*, 37 Wis. 400, in the first of which the state sued to prevent the great public-service corporations of the state from systematically violating and defying laws regulating their rates in the interest of the whole people, which laws were in effect amendments to the corporate charters of the companies; and in the second of which the state sued to prevent a purpresture in one of the great navigable rivers of the state connecting with the Mississippi river, which the state is bound to keep open as a common highway to the people of this state and of the United States. Upon the same general ground this court later entertained an action on the relation of the attorney general to prevent the tearing up of a railroad; the idea being that a railroad operated under a franchise granted by the state is a state high-

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way whose destruction affects the interests of the state at large. *State ex rel. Atty. Gen. v. Trost*, 113 Wis. 623, 88 N. W. 912, 89 N. W. 915. The great public interests involved in these cases are so apparent as to obviate the necessity of comment upon them. In the case of *State v. St. Croix Boom Corp.* 60 Wis.

565, 19 N. W. 396, however, the court declined jurisdiction of a case very similar to the Eau Claire Case, because the St. Croix river was a river on the boundary of the state, as to which the state was under no trust to keep it open.

IV. In the next class may be placed the cases where it has been sought, by mandamus or mandatory injunction, to compel a state officer to perform a ministerial duty. Under this head, the cases involving performance of important duties imposed on state officers by the general election laws form a striking group, the first of these cases being the case of State ex rel. McDill v. State Canvassers, 36 Wis. 498, where mandamus was sought to compel the state board of canvassers to declare a certain result from the returns of a congressional election, and the court deemed the case one wherein the original jurisdiction should be exercised, although the office in issue was in a sense local, because the circuit judge himself was the opposing candidate, and could not act judicially upon such a question, hence the remedy in the circuit court was utterly inadequate. It is instructive to note that after this decision, by chapter 231 of the Session Laws of 1880, the legislature passed an act regulating the procedure in mandamus cases brought in the supreme court against any board of canvassers to compel the delivery of a certificate of election to either of the offices of member of the legislature, congressman, or presidential elector; thus apparently giving the legislative sanction to the idea that controversies concerning the canvass of votes at general elections for either of such offices so far affected the prerogatives of the state, or the liberties of the people, or both, as to come fairly within the original jurisdiction of the court. The substance of this provision has ever since remained a part of the mandamus statute. Section 3452, Stat. Wis. 1898. Other cases where the original jurisdiction has been invoked to compel the performance of official duty imposed by general election laws are the cases of State ex rel. Kustermann V. State Canvassers, 145 Wis. 294, 130 N. W. 489; State ex Tel. Cook V. Houser, 122 Wis. 534, 100 IST. W. 964, State ex

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rel. Bancroft v. Frear, 144 Wis. 79, 140 Am. St. Rep. 992, 128]Sr. W. 1068, and State ex rel. Rinder v. Goff, 129 Wis. 668, 9 L.E.A.(]Sr.S.) 916, 109 K W. 628. The first of these last-named actions was practically the same as the McDill Case, the second and third were cases involving the duty of the secretary of the state, under general election laws, to place the names of certain persons upon the official ballot as nominees of a great political party for state offices, and the Kinder Case was a very good example of the exceptional cases where, though the office in issue was purely local, jurisdiction was assumed because

of the absolute inadequacy of the remedy in the lower courts, and the abstract question involved was a question affecting the interests of the entire public.

Another group of significant cases under the fourth head are the mandamus actions brought to compel payment of funds from the state treasury to the persons or corporations alleged to be entitled thereto by law. In this group fall State ex rel. Bell v. Harshaw, 76 Wis. 230, 45 IST. W. 308, brought to compel the state treasury to pay over certain moneys in the state treasury to certain counties; State ex rel. New Richmond v. Davidson, 114 Wis. 563, 58 L.R.A. 739, 88 JST. W. 596, 90 K W. 1067, brought to compel the state treasurer to pay over to the city of New Richmond an appropriation made by the legislature on account of damages suffered by the city in a cyclone; State ex rel. Garrett v. Froehlich, 118 Wis. 129, 61 L.R.A. 345, 99 Am. St. Rep. 985, 94 N. W. 50, brought to compel auditing of claims against the state for the Keeley treatment of drunkards at private sanitariums; State ex rel. Buell v. Frear, 146 Wis. 291, 34 L.R.A. (N.S.) 480, 131 N. W. 832, brought to compel auditing of salaries of the civil service commission and its employees; and State ex rel. Bashford v. Frear, 138 Wis. 536, 120 N. W. 216, 16 Ann. Cas. 1019, brought to compel auditing of the salary of a justice of this court.

Under this head, also, naturally fall the cases involving the issuance or revocation of licenses and patents, and of these the case of State ex rel. Drake v. Doyle, 40 Wis. 175, 186, 22 Am. Rep. 692, is the most significant. Here mandamus was invoked against the secretary of state upon the mere relation of a private individual in order to compel that officer to revoke the license of a foreign insurance company, because it had com-

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mitted an act which, under the state law, worked a forfeiture of its license. In this case the attorney general appeared for the secretary of state, and suggested that the relator's personal grievance had been settled. Nevertheless the action went on as the suit of the state to vindicate and preserve "the prerogatives of the state in its sovereign character," and a peremptory mandamus was awarded.

Other cases of this general nature are State ex rel. Anderson v. Timme, 60 Wis. 344, 18 IST. W. 837, brought to compel the issuance of a patent by the commissioners of public lands; State ex rel. Abbot v. McFetridge, 64 Wis. 130, 24 IST. W. 140, to compel issuance of a license to a railroad company to do business, on the allegation that it had fully paid the legal license fees; also, the case of State ex rel. Covenant Mut. Ben. Asso. v. Root, 83 Wis. 667, 19 L.E.A. 271, 54 N. W. 33, brought to compel the state insurance commissioner to issue a license to a foreign insurance company which had fully complied with the law.' This last case, however, was directly overruled in the case of Ee Court of Honor, 109 Wis. 625, 85 K W. 497,

where this court refused to entertain an exactly similar action, on the ground that the primary right sought to be vindicated was private, and the public right, if involved at all, was only incidentally affected, and hence the circuit court was the appropriate tribunal to pass on the question in the first instance. AVhether this ruling does not in effect negative jurisdiction in the Timme and McFetridge Cases, just cited may be a question of some doubt, but it is not necessary to determine it here. The case of State ex rel. Guenther v. Miles, 52 Wis. 488, 9 W. 403, where the original jurisdiction was used on the relation of the state treasurer to compel a county treasurer to make an official return, is not significant, as the question of jurisdiction was not raised.

V. In the last class fall the cases where it is sought to restrain a state officer (and in exceptional cases a county officer) from committing an unlawful act which will affect the prerogatives of sovereignty of the state, or the liberties of the people. The most conspicuous examples in this class of cases are the so-called "Gerrymander Cases," State ex rel. Atty. Gen. v. Cunningham, 81 Wis. 440, 15 L.R.A. 561, 51 K W. 724, and State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.R.A. 145,

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35 Am. St. Rep. 27, 53 N. W. 35,— the first of which was brought by the attorney general himself, and the second by a private relator on leave of the court, after the attorney general had refused to act. In these cases it was sought to enjoin the secretary of state from carrying out the terms of an apportionment law, on the ground that the law violated the commands of the Constitution, and was void. Here, for the first time, this court held that it could and would, on the relation of a private citizen, prevent a state officer from enforcing an unconstitutional law which injuriously affected the liberties of the people as an unfair and unconstitutional division of the legislative election districts of the state must necessarily do. In neither of these cases was jurisdiction sustained, because of the alleged unlawful expenditure of public funds, nor because of the fact that the relator was a taxpayer, but in both the ground was that an injury to the people of the state was about to be committed by depriving many voters of their just and constitutional rights in the election of the legislative bodies of the state under the form of a law which violated the express command of the Constitution. The evident idea was that the relator was in no sense the plaintiff. He simply brought the matter to the attention of the court, and, when he had performed this function, he ceased to be of importance. The suit became from its inception the suit of the state to vindicate the liberties of its people generally. Following these cases at a considerable distance in time, but practically identical in principle, are the so-called "Twenty per cent, — Cases," — State ex rel. McGrauel v. Phelps, 144 Wis. 1, 35 L.E.A. (Sr.S.) 353, 128 N. W. 1041, and State ex rel. Hanna V. Frear, 144 Wis. 58, 128 N. W. 1061, — where, on the relation of private individuals, state and county officers were

sought to be enjoined from enforcing a law requiring that, in order to be represented on the official ballot, a political party must cast at the primary 20 per cent of its vote for governor at the last preceding general election. The ground taken was that this provision was an unreasonable, unconstitutional restriction or infringement on the freedom of the ballot, and hence it affected the liberties of the people. Although objection to the jurisdiction was formally taken in these cases, it was not pressed, it was not discussed, and the court simply said that it saw no reason why jurisdiction should not be exercised.

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In this class, if anywhere, must naturally fall the case of "State ex rel. Eaymer v. Cunningham, 82 Wis. 39, 51 IT. W. 1133, which has been previously cited, brought on the relation of a taxpayer to prevent the payment of salary to a state officer over and above the amount limited by the Constitution. As has been before said in this opinion, the jurisdiction in that case was sustained by brief reference to the first Gerrymander Case, which is quite plainly a different case. Unquestionably the real ground was that the legislature was by express command of the Constitution prohibited from paying to the state-superintendent out of the state funds any sum exceeding \$1,200 per annum. Hence the law attacked in that case, which directed payment of a greater sum every year, was absolutely void, and the state itself was entitled to the intervention of the extraordinary jurisdiction of this court to protect itself from unconstitutional and unlawful depletion of its treasury by its own-officers.

In both the Eosenhein Case, 138 Wis. 173, 119 IST. W. 894, and the Filer & S. Case, 146 Wis. 629, 132 N. W. 584, the-applications to bring actions on the relation of taxpayers were-denied, because it was considered in each case that no unlawful! expenditure of funds by state officers was threatened, but in the first-named case it was expressly said, and in the second it was assumed, that, in order to prevent illegitimate expenditure of state funds, an equitable action on the initiative of a taxpayer, after refusal by the attorney general, would be properly within the original jurisdiction of this court. There are-several other cases which have more or less bearing on the general question which will be briefly mentioned. In the case-of Re Hartung, 98 Wis. 140, 73 K W. 988, it was sought to use the original jurisdiction of this court by way of injunction to put an end to a public nuisance in the town of Wauwatosa, consisting of the depositing of garbage on the surface of land to the discomfort of a very large neighborhood ; but it was held that such a wrong, though public, was not a wrong affecting the sovereignty, franchises, or prerogatives of the state, or the liberties of the people at large, and that the remedy was in the-local courts. This seems to be an entirely logical application of the general principle laid down in the Railroad Cases that,, even though a question be publici juris, it will not call for the-

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Tise of the original jurisdiction if it be merely local in its effect. The sequel to this case, which appears by reference to State ■ex rel. Hartung v. Milwaukee, 102 Wis. 509, 78 K W. Y56, is also instructive. After the decision in Ee Hartung, supra, the relator went to the circuit court, and, after refusal by the iittorney general, was allowed to bring an action in the circuit <3ourt in the name of the state to enjoin the further continuance of the alleged public nuisance. The case was tried on the merits and an injunction refused, and on appeal to this court it was held that the circuit court was not given the writ of injunction for prerogative purposes, as this court was, and that hence the action below was never in fact an action by the state, notwithstanding its title, but was an action by a private party.

In view of this last-named decision, the recent case of State ■ex rel. Van Alstine v. Frear, 142 Wis. 320, 125 N. W. 961, 20 Ann. Cas. 633, becomes interesting, if not important. This ■case was an action brought in the circuit court in the name -of the state, after refusal to act by the attorney general, upon "the relation of a taxpayer; the object being to enjoin the secretary of state and state treasurer from carrying out the provisions of the primary election law, and especially from auditing or paying claims or bills for expenses arising under the law, on the ground of unconstitutionality of the law. The jurisdiction of the circuit court in this case was not challenged by demurrer, nor was it raised or considered either in the lower court, or in this court, yet it seems quite manifest that it was a case where injunction was used in the circuit court for prerogative purposes contrary to the principle laid down in the case of State ex rel. Hartung Milwaukee, just cited. However, as the question of jurisdiction passed sub silentio, the case is not significant.

Before proceeding to draw general conclusions from these decisions as to the field of the original jurisdiction, so far as any field has been marked out by the decisions, it may be well, in order to avoid misapprehension, to notice the fact that the legislature by § 3200, stat. 1898, has consented that the state may be sued in the supreme court by any person having a just claim which has been disallowed by the legislature. Actions brought under this section are, of course, brought by virtue of the consent of the state, without which the sovereign itself can-

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not be sued. Nothing said in this opinion is to be construed as having any bearing on this section or the actions brought under it.

The affirmative result of the significant cases since the Railroad Cases is, as it seems to us, that the original jurisdiction

of this court may be rightly invoked when there is a showing made either that (1) a citizen is wrongfully deprived of his liberty; (2) a state office has been usurped; (3) a franchise grantable only by the state has been usurped, abused, or forfeited; (4) a law regulating public-service corporations in the interest of the people is systematically disobeyed and set at naught; (5) a navigable river, which the state is bound to keep open as a highway for all, is obstructed or encroached upon, or a public railroad built under a charter granted by the state is about to be destroyed; (6) a state officer declines to perform a ministerial duty, in the performance of which the people at large have a material interest; (7) a state officer is about to perform an official act materially affecting the interests of the people at large, which is contrary to law or imposed upon him by the terms of a law which violates constitutional provisions ; or (8) the situation is such in a matter publici juris that the remedy in the lower courts is entirely lacking or absolutely inadequate, and hence jurisdiction must be taken or justice will be denied. It is not meant by this attempted classification that no cases which do not fall within one or the other of the classes can ever call for the exercise of the original jurisdiction, but simply that cases falling within these general classes have been held to be properly within the original jurisdiction. In addition to these eight affirmative propositions, the decided cases justify the statement of several negative propositions which are also helpful upon the general question. These are: (1) A case, although involving a question publici juris, will not come within the jurisdiction if it be only local in its effect, subject only to the exception named in the eighth class. (2) A case involving a mere private interest, or one whose primary purpose is to redress a private wrong, will not be entertained. (3) A case will not be dismissed, however, because there is a private interest involved with the public interest, provided the private interest be incidental merely, and the vindication of the public right be the primary purpose of the action. (4)

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An action involving a private as well as a public interest will not be dismissed merely because the private interest may drop out, provided the public and private interests be severable and the public interest still exists. (5) The Constitution has not given the circuit court the power to use the writ of injunction as a prerogative jurisdictional writ, as it has been given to the supreme court, hence the circuit court has not the power in an action not brought by the attorney general, but on the relation of a private citizen only, to use the writ for prerogative purposes.

It seems to us now that the real fundamental philosophy of the original jurisdiction and its use has not been at all times fully apprehended by the court, even since the elaborate discussion in the Railroad and Eau Claire Cases, but, after this review of the authorities, it seems quite simple, and it really comes down to a few propositions which, when thoroughly un-

derstood, solve many difficulties.

This transcendent jurisdiction is a jurisdiction reserved for the use of the state itself when it appears to be necessary to vindicate or protect its prerogatives or franchises, or the liberties of its people. The state uses it to punish or prevent, wrongs to itself or to the whole people. The state is always the plaintiff, and the only plaintiff, whether the action be brought, by the attorney general, or, against his consent, on the relation of a private individual under the permission and direction of the court. It is never the private relator's suit. He is a mere incident. He brings the public injury to the attention of the court, and the court, by virtue of the power granted by the Constitution, commands that the suit be brought by and for the state. The private relator may have a private interest which may be extinguished (if it be severable from the public interest), yet still the state's action proceeds to vindicate the public right. The fact that in many cases, as, for example, cases of unlawful imprisonment, the private wrong and the public wrong are so closely identified that the ending of the private wrong necessarily puts an end to the public wrong, makes no difference with the principle.

These propositions, if correct, and we believe they are, demonstrate very clearly that there can be no such thing as a taxpayer's action (as that action is known in the circuit courts)

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brought in the supreme court within the original jurisdiction. The philosophy of the taxpayer's action in the circuit court is that the taxpayer is a member of a municipal corporation, who, by virtue of his contributions to the funds of the municipality, has an interest in its funds and property of the same general quality as the interest of a stockholder in the funds of a business corporation, and hence, when corporate officers are about to illegally use or squander its funds or property, he may appeal to a court of equity on behalf of himself and his fellow stockholders (i. e., taxpayers) to conserve and protect the corporate interests and property from spoliation by its own officers.

The taxpayer himself is the actual party to the litigation, and represents not the whole public, nor the state, nor even all the inhabitants of his municipality, but a comparatively limited class ; namely, the citizens who pay taxes. In short, he sues for a class.

No such thing is known in the exercise of the original jurisdiction of this court. In actions brought within that jurisdiction the state is the plaintiff, and sues to vindicate the rights of the whole people.

The Bolens Case cannot, therefore, be held to come within the original jurisdiction of this court, if it be a mere taxpayer's action.

This conclusion, however, by no means leads to the result that the original jurisdiction may not properly be used at the instance and upon the relation of a private individual to stay, by appropriate writ, the expenditure of the state's funds for purposes expressly or by necessary implication forbidden by the Constitution. Such use of funds by a state officer is certainly as much a breach of duty and an injury to the state as the refusal to pay out funds which have been lawfully appropriated, or the failure to obey the provisions of general election laws ; but in such case the action is the action of the state as truly as if brought by the attorney general, not the action of the taxpaying relator.

If this be true, we can see no logical escape from the conclusion that, where state officials are about to spend the state's money in executing an unconstitutional law, the state may prevent the threatened misapplication of its funds by the same means. This seems to us the only logical basis upon which

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the case of State ex rel. Raymer v. Cunningham, 82 Wis. 39, 59 N. W. 1133, can rest.

But it must be recognized that such a power is extreme. To arrest the hand of a state officer as he is about to carry out the command of the legislature is indeed a serious step, one not to be taken summarily, or without profound consideration. As the power is great, it should be exercised with a wisdom and discretion commensurate with its greatness. 'No trivial grounds should impel the court to permit its exercise. This court will certainly not feel obliged, in every case where there is a threatened expenditure of state funds under a law of doubtful constitutionality, to allow an action of this nature to be brought in the name of the state, but will feel entirely free to leave the question of constitutionality to be settled as it may arise in ordinary litigation. The defiance of express or implied constitutional commands may be so flagrant and patent as to make the exercise of this great power appear justifiable, if not absolutely necessary, and in such case it will be exercised courageously. This court will, however, judge of the exigency in each case as it arises, and will endeavor to guard the great power from being used in trifling cases or to accomplish ulterior purposes.

In the present case we go no further than to state these general principles. We do not find it necessary to decide whether the alleged illegal expenditure of funds alone presents a case

of such exigency as to justify the use of the original jurisdiction of this court to prevent such expenditure. There are other and more important features in the present case which, in our judgment, present a proper case for the exercise of the original jurisdiction.

The law which is attacked here, if it be valid, makes a radical change in the present system of taxation over the whole state.

Since the days when Hampden refused to pay the ship money, unjust taxation has been deemed, by English speaking nations, at least, to vitally concern, if not to destroy, the liberties of the people. Such taxation has been deemed to justify armed resistance, and, if need be, revolution. Insistence upon it cost Charles I. his life and England an empire. If this law in its essential provisions violates constitutional provisions Foster Income Tax. - 82.

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sions, and hence is void, taxation under it is, of course, unjust, and the sums which may be collected under it are unlawfully collected. It makes in terms a very sweeping change in the methods of taxation in every taxing district of the state, and shifts the burdens of taxation so that many will pay more than under the old system, while many will pay less. If it should go into operation for a year or two and then be held unconstitutional in some actual case, the confusion created in the financial affairs of the state and of every municipality would unquestionably be great. We cannot but regard any serious question as to the constitutionality of such a law as a question seriously affecting the prerogatives of the state, as well as the liberties of the people; hence we conclude that the case presented is one justly calling for the exercise of the original jurisdiction of this court.

Many provisions of the law are attacked as offending against either the Federal or the state Constitutions. We shall only treat the contentions which might, from some point of view, be considered as going to the validity of the whole act. As to those minor provisions, which are properly to be regarded as matters of detail, we shall express no opinion. This is in accord with our well-established custom in cases of this nature. *Wadhams Oil Co. v. Tracy*, 141 Wis. 150, 123 K W. 785, 18 Ann. Cas. 779 ; *State ex rel. Buell v. Frear*, 146 Wis. 291, 34 L.E.A. (]Sr.S.) 480, 131 K W. 832; *Borgnis v. Falk Co.* 147 Wis. 327, 37 L.R.A. (]Sr.S.) 489, 133 N". W. 209, 2 K C. C. A. 834. A few general observations may not be out of place before taking up for consideration the specific claims of unconstitutionality which are urged upon our attention.

The law in question, if valid, works a very important change in the general taxation policy of the state. Ever since the foundation of the state government it has been the policy of the

state to levy its general taxes upon property, either real or personal, with the exception of the inheritance taxes and the license taxes first levied on railroads and latterly upon other public-service corporations. The Constitution of the state, though not forbidding excise taxation, as determined in the inheritance tax case (*Nunnemacher v. State*, 129 Wis. 190, 9 L.E.A. (]Sr.S.) 121, 108 N. W. 627, 9 Ann. Cas. 711), contained only one brief section on the general subject of taxation ; namely,

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§ 1 of article 8, reading as follows : "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." Under this section property taxation has been the rule, with the exceptions just noted, until the passage of the present law. This law, however, is but the concrete embodiment of a popular sentiment which has been abroad for some time. The legislatures of 1905 and 1907 (Laws 1907, chap. 661) passed a resolution recommending the amendment of the section of the Constitution quoted, by the addition of the following words : "Taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated, and progressive and reasonable exemptions may be provided." This change was ratified by the people at the general election held in November, 1908, and thus was clearly expressed, by both legislature and people, the idea that some form of general taxation in addition to, or in place of, property taxation, might well be adopted. The attempt has now been made to carry out this idea, and we have the result before us in the present law. With the political or economic policy or expediency of the law, we have nothing to do. If it be within constitutional lines, it represents and embodies public policy, because it is enacted by that branch of the government which determines public policy.

It may be well to note, however, that income taxation is no new and untried experiment in the field of taxation. It has been in use in various forms, and generally with the progressive feature, by many of the civilized governments of the world for decades, which in some instances run into centuries. It has been used at various times by nearly or quite twenty of our own states, and is now in use in several of them. It was used for a brief period by the government of the United States, and is now in successful operation in practically all of the great nations of the civilized world, except the United States. The fundamental idea upon which its champions rest their argument in its favor is that taxation should logically be imposed according to ability to pay, rather than upon the mere possession of property, which for various reasons may produce no revenue to the owner.

It is argued that '■.here should be as nearly as practicable equality of sacrifice .among the various taxpayers, and that a

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tax levied at a uniform or proportional rate can rarely, if ever, produce equality of sacrifice; that 1 per cent of a small income, which just suffices to support its owner, is a far larger relative contribution to the public treasury than 1 per cent of an income so large that it cannot be exhausted by its owner, except by means of lavish and extravagant expenditures.

We are not to be understood by these remarks to be advancing arguments in support of the policy or expediency of the law, but simply as showing that in passing the law the legislature is only adopting a scheme of taxation which has been approved for many years by many of the most enlightened governments of the world, and has the sanction of many thoughtful economists.

By the present law it is quite clear that personal property taxation for all practical purposes becomes a thing of the past. The specific exemptions of all money and credits and the great bulk of stocks and bonds, as well as of all farm machinery, tools, wearing apparel, and household furniture in actual use, regardless of value, goes far to eliminate taxation of personal property; while the provision that he who pays personal property taxes may have the amount so paid credited on his income tax for the year seems to put an end to any effective taxation of personal property. That taxation of such property has proven a practical failure will be admitted by all who have given any attention to the subject. Doubtless this was one of the main arguments in the legislative mind for the passage of the present act. By this act the legislature has, in substance, declared that the state's system of taxation shall be changed from a system of uniform taxation of property (which so far as personal property is concerned has proven a failure) to a system which shall be a combination of two ideas; namely, taxation of persons progressively, according to ability to pay, and taxation of real property uniformly, according to value.

We pass from these general observations to consideration of the specific grounds of unconstitutionality alleged.

I. It is first claimed with much earnestness and ability that the act violates the provisions of the 14th Amendment to the Federal Constitution. One of the contentions under this head is that the progressive features of the act are discriminatory, if not absolutely confiscatory. Another contention is that the

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act provides for double taxation, and for both reasons it is claimed that it denies to citizens the "equal protection of the laws." It is said in support of this contention that the United States Supreme Court in the Pollock Case, 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Eep. 673, has held that taxation of

income derived from land is in fact taxation of the land itself, hence that the act provides for double taxation; first, of the land in specie, and next, of the income therefrom. It seems that this claim may be very easily met. The question in the Pollock Case was whether the taxation of rentals of land was direct taxation within the meaning of that term as used in the Constitution of the United States; and it was held to be the same, in substance, as a tax on the land itself, and hence a direct tax. This may be admitted for the purposes of the case, but it does not appear to, in any way, decide the question here at issue, or even to be very persuasive. The question there was of the power of Congress under that clause of the Federal Constitution which forbids any direct Federal tax, except one levied in proportion to the population. The question here is primarily of the power of the legislature of Wisconsin under its Constitution to levy an income tax in addition to a real estate tax; and, secondarily, whether such a tax denies to anyone the equal protection of the laws.

The inapplicability of the rule of the Pollock Case to the case here presented seems so plain as to require little comment. There can be no doubt of the proposition that income taxation of a progressive character, in addition to taxation of property, is directly authorized by the Constitution of Wisconsin as amended in 1908. Words could hardly be plainer to express that idea than the words used. From them it clearly appears that taxation of property and taxation of incomes are recognized as two separate and distinct things in the state Constitution. Both may be levied, and lawfully levied, because the Constitution says so. However philosophical the argument may be that taxation of rents received from property is in effect taxation of the property itself, the people of Wisconsin have said that "property" means one thing, and "income" means another; in other words, that income taxation is not property taxation, as the words are used in the Constitution of Wisconsin.

That they may say so, and lawfully say so, there is no doubt.

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unless some restriction in the Federal Constitution is thereby violated; and we are pointed to none, save the clause guaranteeing "equal protection of the laws." That this clause does not apply to the case seems very well settled by the language of the Supreme Court of the United States itself in the great case of Michigan C. E. Co. v. Powers, 201 U. S. 245, at pages 292, 293, 50 L. ed. 744, 761, 762, 26 Sup. Ct. Rep. 459, 462, where it is said: "There is no general supervision on the part of the nation over state taxation; and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects and methods. It was well said by Judge Wanty, delivering the opinion of the circuit court in this case (Michigan R. Tax Cases [C. C.] 138 Fed. 232): 'There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not de-

signed by the 14th Amendment to the Constitution to prevent a state from changing its system of taxation in all proper and reasonable ways, nor to compel the states to adopt an ironclad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice.' " This doctrine has been stated and restated in many forms, but with substantially the same meaning in many Federal cases, beginning with the case of Bell's Gap E. Co. v. Pennsylvania, 134 U. S. 232, 33 L. ed. 892, 10 Sup. Ct. Eep. 533, nearly all of which are cited in the Powers Case at the close of the clauses above quoted. It seems unnecessary to quote or descant upon them. The sum and substance of it is that the 14th Amendment never was intended to lay upon the states an unbending rule of equal taxation. The states may make exemptions, levy different rates upon different classes, tax such property as they choose, and make such deductions as they choose, and, so long as they obey their own Constitutions and proceed within reasonable limits and general usage, there is no power to say them nay.

With regard to the progressive feature, it is aptly said in Knowlton v. Moore, 178 U. S. 41, at page 109, 44 L. ed. 969, 996, 20 Sup. Ct. Rep. 747, 774, by the present chief justice,

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that "taxes imposed with reference to the ability of the person upon whom the burden is placed to bear the same have been levied from the foundation of the government. So, also, some authoritative thinkers and a number of economic writers contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or is not is legislative, and not judicial." No more need be said as to the progressive feature. Expressly permitted as it is by our own Constitution, and clearly not within the inhibitions of the 14th Amendment, the progressive feature is' in no respect objectionable. It was suggested in the Knowlton Case, supra, that possibly the case might arise where exactions so arbitrary and confiscatory might be imposed under the guise of progressive taxation that the question would arise whether judicial power should not afford relief under inherent and fundamental principles of justice, but, as there is plainly no ground for such a contention here, there is no need of considering the question.

II. It is argued that the provisions which deny to nonresidents the exemptions which are allowed to residents, and which allow the board of review to increase the assessment of a non-resident without notice, while requiring notice to be given to a resident, violate § 2 of article 4 of the Federal Constitution, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several

states." The question as to the validity of the provision allowing exemptions to residents of the state and denying them to nonresidents is raised, and received some attention in the briefs, but was not mentioned in the oral arguments. We regard it as a question involved in considerable doubt, and one not necessary to be passed upon now.

It cannot be imagined for a moment that the legislature would have failed to pass the act had it not contained this provision, and we prefer to wait until the question is presented in a concrete case, at which time there will be opportunity to fully consider it after comprehensive briefs and arguments. It seems that the Supreme Court of the United States decided in *Ward v. Maryland*, 12 Wall. 418, at page 430, 20 L. ed. 449, 452, that one of the privileges and immunities protected by the section quoted is the right "to be exempt from any higher

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taxes or excises than are imposed by the state upon its own citizens." Other decisions relied on upon the same side are *Ee Stanford*, 126 Cal. 112, 45 L.E.A. 788, 58 Pac. 462, and *Sprague v. Fletcher*, 69 Vt. 69, 37 L.E.A. 840, 37 Atl. 239, and the cases cited in the latter case. On the other side reliance is placed on the analogy of the laws providing for exemptions from execution seizure, which confine their benefits to residents, and upon *Travellers' Ins. Co. v. Connecticut*, 185 U. S. 364, 46 L. ed 949, 22 Sup. Ct. Eep. 673.

So far as the provision allowing the increasing of an assessment against a nonresident without notice is concerned, this would seem to be almost a necessity if power to increase the assessment of a nonresident is to be given to the board at all, otherwise the nonresident would only need to stay out of the state to prevent the possibility of an increase of his assessment. We do not consider that this latter provision affects in any way the privileges or immunities which are covered by the constitutional provision cited.

III. The claim is made that the law violates the constitutional guaranties of local self-government by placing the power of appointment of the various assessors of incomes in the state tax commission. These guaranties in substance are (1) that all county officers, except judicial oflSicers, shall be chosen by the electors of the county every two years (*Wis. Const*, art. 6, § 4) ; (2) that all coimty officers whose election or appointment is not provided for by the Constitution itself shall be elected by the electors or appointed by the proper county authorities, as the legislature shall direct; (3) that all city, town, and village officers, whose election or appointment is not provided for by the Constitution, shall be elected by the electors of the proper municipality or appointed by such municipal authorities as the legislature shall designate ; (4) that all other officers whose election or appointment is not provided for by the Constitution and all officers whose offices may thereafter be

created by law shall be elected by the people, or appointed as the legislature may direct. Wis. Const, art. 13, § 9. These provisions have been quite fully considered and expounded by this court in several cases, and it seems unnecessary to add to the quite complete discussions of the subject to be found in *O'Connor v. Fond du Lac*, 109 Wis. 253, 53 L.E.A. 831, 8?-

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N. W. 327, and *State ex rel. Gubbins v. Anson*, 132 Wis. 461, 112]Sr. W. 475. It is sufficient to say that we do not regard the office of assessor of incomes, as provided for by this act, as either a county, city, town, or village office ; nor do we regard it as an office existing in substance at the time of the adoption of the Constitution, or essential to the existence or efficiency of either of said municipal divisions of the state, but rather an entirely new office within the fourth class above named, whose election or appointment may be provided for in any way that the legislature may in its discretion direct.

The further contention is made that it is a delegation of legislative power to vest in the state tax commission the power of appointing assessors of incomes and fixing their salaries. This objection is met and fully answered in *State ex rel. Gubbins v. Anson*, supra, and in *Eevisor's Case*, 141 Wis. 592, 124 N. W. 670, 18 Ann. Cas. 1176.

IV. A number of contentions are made with regard to, the exemption features of the act, and, first, it is said under this head that the allowance of exemptions to individuals and the denial of them to partnerships is unjust discrimination. The question depends, of course, upon whether there is any valid ground for classification. Is there such a substantial difference between the classes as to reasonably suggest or call for the propriety of different treatment? We are clearly of opinion that this question must be answered in the affirmative. A partnership ordinarily has certain distinct and well-known advantages in the transaction of business over the individual, arising from the fact that it allows a combination of capital, brains, and industry, and thus makes it possible to accomplish many things which an individual in the same business cannot accomplish. Further than this, however, there is another consideration. If the partner have individual income from other sources than the partnership business (as many do), his exemptions will be allowed to him out of the individual income, and thus, if he were also allowed exemptions from the partnership income, he would be allowed double exemptions. Altogether there seems to be ample reason for the classification. The exemptions themselves do not seem to be seriously attacked, nor do we see any reason why they should be. The most striking exemption is that of life insurance to the amount of \$10,000

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in favor of one legally dependent on the deceased; but, while this is somewhat large, we cannot say that it is unreasonable, nor that there is not ample ground for classifying legally dependent persons, and extending an exemption to them which is denied to others.

Attack is made upon the provision which directs that a taxpayer who has paid a personal property tax for the year shall be entitled to have the amount so paid credited upon his income tax. There is said to be no just ground for this distinction, but it seems quite clear to us that there is. In fact, it seems to be rather a means of equalizing the burden of the new form of taxation, than to be really an exemption. It was evidently done with the idea of accomplishing, without too violent a shock to taxing machinery, the substantial elimination of personal property taxation, and the substitution thereof of "ability" taxation. The practical result is that the taxpayer who has taxable personal property and the taxpayer who has none each pays taxes according to his ability as evidenced by his income.

In this connection, though not perhaps in its logical order, may be considered the objection to that provision of the act which directs that the estimated rental of residence property occupied by the owner shall be considered as income. It is said that this is not income, and that calling it income does not make it income. It may be conceded that things which are not in fact income cannot be made such by mere legislative fiat, yet it must also be conceded, we think, that income in its general sense need not necessarily be money. Clearly it must be money or that which is convertible into money. The Century Dictionary defines it as that which "comes in to a person as payment for labor or services rendered in some office, or as gain from lands, business, the investment of capital," etc. The clause was doubtless inserted in an effort to equalize the situation of two men each possessed of a house of equal rental value, one of whom rents his house to a tenant, while the other occupies his house himself. Under the clause in question, the two men with like property are placed upon an equal footing, and in no other way apparently can that be done. Under the English income tax laws, it has been held that where a man has a residence or right of residence which he can turn into money if he chooses, and he occupies the residence himself, the annual value of the rental

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forms part of his mcome. Oorke v. Fry, 32 Scott L. K. 341.
We discover no objection to the provision in question.

Objection is also made to the provision that the income of a wife living with her husband shall be added to the income of the husband, and the income of each child under eighteen years of age living with its parent or parents shall be added to that of the parent or parents. This is another case of classification, and it is only justifiable in case there is some substantial differ-

ence of situation which suggests the advisability of difference of treatment. We think there clearly is such a difference in this: That experience has demonstrated that otherwise there will be many opportunities for fraud and evasion of the law, which the close relationship of husband and wife or parent and child makes possible, if not easy. The temptation to make colorable shifts and transfers of property in order to secure double or even triple exemptions, if there were not some provision of this kind in the law, would unquestionably be very great. There is no such temptation or opportunity in the case of the single man, or the man and wife who are living separately.

One further objection we overrule here without comment, for the reason that it seems very unsubstantial ; namely, the objection that the law is retroactive and void, because assessed on incomes received during the entire year 1911, while it did not go into effect until July 15th of that year, and also because it includes profits derived from the sale of property purchased at any time within three years previously.

V. A strong argument is made attacking the validity of § 1087m - 22, which provides, in substance, that the income of a resident derived from different political subdivisions of the state shall be combined for the purpose of determining the exemptions and the rate, while the income of a nonresident is to be separately assessed and taxed in each of the municipalities from which it is derived. A table is submitted showing that under this rule if A, a resident, derived \$1,000 from each of thirteen different towns or cities, he will be required to pay a tax of \$367, because his income is aggregated, and consequently becomes in large part subject to the higher rates, while if B, a nonresident, receives the same income from the same sources, he will only pay the smallest rate, t. e., 1 per cent of each \$1,000, amounting to only \$130. This, it is said, is unjust discrimination against

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the residents of the state, and deprives them of the privileges and immunities which are granted to the citizens of other states in violation of the Federal Constitution. This presents the question whether such a discrimination can be made between residents and nonresidents, only this time the discrimination seems to be against the resident and in favor of the nonresident. This question, also, we deem one not necessary to be decided now, and we intimate no opinion upon it. It does not seem that the case will frequently arise, but, if it does, it can be then treated. We do not regard it as in any respect important in considering the validity of the act as a whole.

VI. Much complaint is made of that part of § 1087m: - 6 which provides a different rate of taxation for the income of corporations from the rate prescribed for individuals, and this also is said to be unjust discrimination. Again, the question is whether there be substantial differences of situation between individuals and corporations which suggest and justify this dif-

ference in treatment, and again it seems that the answer must be, "Yes." The corporation is an artificial creation of the state, endowed with franchises and privileges of many kinds which the individual has not. It might be said with truth that the clause could be justified on the ground that it is an amendment to every corporate charter, which the legislature has the undoubted right to make, but it is not necessary to rely on that proposition. The corporate privileges, which are exclusively held by corporations, and the real differences between the situation of a corporation and an individual, among which may be mentioned the fact that the corporation never is obliged to pay an inheritance tax, plainly justify a difference of treatment in the levying of the income tax. Were the income tax a tax upon property, there could be no difference in rate, for taxation of property must still be on a uniform rule ; but, as has been heretofore noted, it is not a tax upon property within the meaning of our Constitution.

VII. The minor objections that the law in terms includes all corporations, and does not specifically except national banks, nor name the officers whose salaries cannot be constitutionally taxed, are very easily disposed of. If national banks or any public officers cannot constitutionally be subjected to the tax, the law will be construed as not applying in such cases, just as-

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§ 1770b, Stat. (Laws 1907, chap. 562), although in general terms covering all business, has been held not to apply to interstate business.

VIII. We come now to certain serious objections which are made to the provisions of §§ 1087m - 2, subd. 3 and 1087m - 3 (b). The first of these sections provides, in substance, that a resident shall be taxed upon all of his income arising from rentals, stocks, bonds, securities, or evidences of debt, whether the same be derived from sources within or without the state, but that the nonresident shall only be taxed on income derived from sources within the state, or within its jurisdiction, but that any person doing business both within and without the state shall, as respects that part of his income not derived from rentals, stocks, bonds, and securities, be taxed only on that proportion thereof which is derived from business transacted and property located within the state, to be determined in the manner specified in subdivision "e" of § 1770b, Stat. (Laws 1907, chap. 562), as far as applicable. The general purpose of the section is quite evident, namely, to tax a resident upon his whole income and a non-resident only upon his income plainly derived from sources within the territorial jurisdiction of the state, and to provide that, where either person is engaged in a business interstate in its character, he shall only be taxed on that portion of the income derived from business transacted and property located within the state, according to the rule prescribed in § 1770b for determining that proportion of capital stock of a foreign corporation doing business in this state, which

must be reported to the secretary of state. The rule so imported into the statute is an arbitrary rule, and need not be stated at length in the view we now take of our duty with regard to this contention.

Two fundamental objections are made to this section : First, that the state cannot tax the incomes of nonresidents, no matter from what source derived ; and, second, that the attempt to tax a part of the profits derived from an interstate business, under the rule adopted, must necessarily result in a taxation of the receipts of interstate commerce, and hence a regulation thereof, which is in violation of that clause of the Federal Constitution which gives to Congress the power to regulate commerce between the states.

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We shall decide neither of these questions now. If the section be open to either or both of these objections, or any others, we cannot regard that fact as fatal to the act. The legislature evidently intended to avoid both of the objections made. They had a difficult and delicate subject to deal with. Had they been authoritatively informed that they could not constitutionally tax a nonresident's income at all, and could not divide the income derived partially from state and partially from interstate ■ business, we have no idea that they would on that account have abandoned their purpose to pass the law. Again, if they provided an improper rule for the division (conceding that a division can be made at all), there seems no reason why the rule may not be rejected and the proper rule, which will carry out the fundamental purpose of the provision, be used. In any event, we are fully satisfied that the rejection of any or all of the provisions objected to in this section cannot reasonably be held to invalidate the whole act.

When these questions are presented to us in a case actually arising, we shall be able to give them far more critical examination in the light of arguments and briefs directed exclusively to them. For the present, therefore, we leave the various objections to the validity of those parts of this section which are attacked, without answer.

For the same reasons we decline at the present time to pass upon the objections to the second section referred to under this head. That section provides generally that a proportion of the interest on corporate bonds (to be ascertained in the same manner as the proportionate taxable income is ascertained in the preceding section) shall be taxed against the bondholders and paid by the corporation, and deducted from the next interest

payment on the bonds. Many serious objections on behalf of foreign bondholders are made to this provision, from the fundamental objection that there is no power to levy such a tax at all, to the minor objection that the rule for ascertaining the proportion is incorrect. As we do not deem it necessary to pass upon any of these objections, we need not make particular statement concerning them now. The subject will be entirely open for discussion when an actual case arises necessitating a decision upon this section.

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We have reviewed all of the objections made to the law which we deem of sufficient importance to require specific mention or treatment. As a whole, we regard the law constitutional. If there be provisions which will not stand the test, they are not provisions of such a nature that they must be considered as the inducement to or as the compensation for the balance of the law. They may drop out, and leave the law intact in its fundamental and essential features.

As to the Winding Case commenced in the circuit court, a few words should be said. This was an action brought by a number of persons and corporations who alleged that they were taxpayers, and that they and their fellow taxpayers would be unlawfully taxed, and compelled to pay large sums under the alleged unconstitutional law, thus causing a multiplicity of suits ; and praying that the officers of the state be enjoined from executing the law, and from paying any moneys out of the public treasury in its execution.

This seems to be a taxpayers' action pure and simple, brought in the circuit court to stay the hands of state officers from paying moneys out of the state treasury. We have already held in this opinion that no taxpayers' action can be maintained in the supreme court against the auditing or disbursing officers of the state. If such relief is sought, it must be in an action by the state itself, either brought by the attorney general, or, in case of his refusal, by authority of the court itself, upon the relation of a private citizen. It would seem, a fortiori, that no taxpayers' action should be entertained in the circuit court, where the purpose is to halt the auditing and disbursing officers of the state. We regard this as the better administration. It is enough that this court has the power to authorize such an action if the exigency demands. To divide up that power, and scatter it among the trial courts of the state, and allow every such court to judge of the exigency, might well lead to the bringing of many improvident actions. It is fitting that such an extreme power be vested in this court alone.

The result is that in the Bolens action the demurrer to the complaint must be sustained upon the merits, and judgment ordered dismissing the complaint, without costs ; in the Winding

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Case the order sustaining the demurrers must be affirmed, and the action remanded, with directions to dismiss the complaint for lack of jurisdiction.
It is so ordered.

Keewin and Baenes, JJ., took no part in the decision of the question of jurisdiction.

Maeshall, J. dissenting in part :

I concur in the decision and in the stated general character of this court's original jurisdiction, viz., that it is wholly of a prerogative character, to be exercised in the name of the sovereign, - the state, standing for the people as an entirety.

I concur that prerogative judicial jurisdiction under the Constitution is reserved wholly to this court, and that an ordinary taxpayers' action to vindicate private rights is entirely outside of that field.

I do not concur in the view that the circuit courts have no jurisdiction of taxpayers' actions to enjoin illegal disbursements or waste of state money under the guise of an unconstitutional legislative enactment. The jurisdiction of such circuit courts is as boundless under the Constitution, as to all ordinary matters, as can be the violations of legal or equitable rights. It was lodged there by the people in the beginning. It cannot be given, taken away, or modified, legitimately, by any fiat of this court or in any way except in the manner pointed out in the fundamental law, without invading the field of usurpation.

The historical treatment of this court's administration of its original jurisdiction is not to be taken, I apprehend, as intended to indicate that its power is fenced about by mere precedents, or at all, except by the broad prerogative purposes of the grant. So far as the classification of precedents illustrates the general nature of the jurisdiction respecting what is and what is not within the field of prerogative purpose, it is very valuable, but should be regarded, I think, in that light only. Any situation calling for remedial activity which falls within the prerogative field falls within the original jurisdiction of this court, regardless of whether there is any precedent to fit the case ; but whether such jurisdiction should be exercised or not in any given case must necessarily rest, more or less, in judicial discretion.

I do not concur in the restrictive character of the decision. I think the court should meet now and decide now, plainly and permanently, each of the important questions discussed by counsel, which, obviously, must be decided by this court sooner or later, and the earlier the better for all concerned. Any delay, I think, should be avoided, if possible, thus obviating the occurrence of a period of uncertainty characterized by expensive litigation and business disturbance attributable to failure by this court to grapple now, after the full argument had, efficiently with the matters referred to. Judicial progress along that line is the correct judicial policy. It is wholly within the court's power to so progress. It is the need of the times. The whole people of the state, as it were, are before this court in this case, invoking it to make a full decision. It is due to them to respond as effectually as practicable.

At some future time I will substitute for this brief memorandum an opinion in support of the suggestions made.

Timlin, J., dissenting in part:

Chapter 658, Laws of 1911, relating to the taxation of incomes and making an appropriation for salaries of officers and other expenses of executing and administering the statute, was enacted by the legislature, approved by the governor, and published July 15, 1911. The act went into effect as law from and after its passage and publication, and officers were appointed to administer this law, but no assessment or levy of tax had been made, and the time for enforcing the provisions of this act had not arrived when these suits were begun. I shall consider these suits separately, taking up first that begun in the circuit court by Arthur Winding and F. W. Gezelschap individually and as copartners, the Wisconsin Trust Company a corporation, several other natural persons, a national bank, and the Milwaukee Coke & Gas Company, a corporation. These plaintiffs, evidently selected because of diversity of relations to the act in question, affected differently by different sections of the act, but all desirous of escaping payment of the tax, hence interested in the question of the constitutionality of the statute, join in a taxpayers' suit in their own behalf and in behalf of all the other income taxpayers of the state, against three members of the state tax commission, the secretary of state, and the state treasurer. Foster Income Tax. - 83.

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urer. The cause of action alleged is that the act above referred to is null and void because in violation of the Constitution of the state of Wisconsin and of the Constitution of the United States, and that the members of the state tax commission will, unless restrained by injunction through their subordinate appointees acting under said statute, exact and collect large sums of money from many residents and citizens of Wisconsin, which collections will lead to a multiplicity of suits to recover back

the moneys so collected, or to a multiplicity of suits by the state to collect the fines and penalties provided in and by said act to be enforced against those persons who refuse to comply with the act. On these grounds they pray for an injunction restraining the state tax commissioners and their subordinate administrative officers from attempting to enforce the act, and restraining the secretary of state, who is by the state Constitution auditor, from auditing, and the state treasurer, who is also a constitutional officer, from paying salaries, bills, or expenses of any kind incurred under or payable by the terms of the act in question. This act carries in it a legislative appropriation for such purpose. This is therefore a bill by taxpayers to enjoin the enforcement of a statute levying taxes upon incomes, on the ground that the statute is unconstitutional, which bill is sought to be upheld upon the equitable ground that it takes the place of a multiplicity of suits or actions, but, so far as the secretary of state and the state treasurer are concerned, it is a bill to restrain the payment of moneys out of the state treasury for the purpose of administering or enforcing a law claimed to be invalid. As to the latter defendants, who have no part in executing or enforcing the act except auditing and paying bills, salaries, and expenses under the legislative appropriation, the bill is maintainable only upon the ground that each individual taxpayer in the state has a proprietary interest cognizable in equity in the funds of the state treasury in analogy to the shareholder in a private corporation or the taxpayer in a municipal corporation. *Land, Log & Lumber Co. v. Melntyre*, 100 Wis. 245, 256, 69 Am. St. Eep. 915, 75 IST. W. 964, op. and cases.

The circuit court sustained a demurrer to this complaint, and from that order the plaintiffs appealed to this court. This demurrer went expressly to the point that the circuit court had no jurisdiction of the action, and also to the point that the com-

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plaint did not state facts sufficient to constitute a cause of action; so that both these questions are before us on this appeal. Generally speaking, the law does not give a private remedy for the redress of a public wrong. One damaged or threatened by an unlawful act which affected him only as it affected that section of the public holding the same legal relation to such act could not, at common law or in equity, maintain an action against the doer of such act. And it mattered not that his damages were greater. If they were of the same nature, and differed only in degree, the wrong was still a public wrong. The rule has been applied in a great variety of cases in this court *Enos v. Hamilton*, 27 Wis. 256; *Cohn v. Wausau Eoom Co.* 47 Wis. 314, 2 ISr. W. 546; *Baier v. Schermerhom*, 96 Wis. 372, 71 K W. 600 ; *Stedman v. Berlin*, 97 Wis. 505, 73 N. W. 57; *Liermann v. Milwaukee*, 132 Wis. 628, 13 L.RA.(KS.) 253, 113 ISr. W. 65 ; *Linden Land Co. v. Milwaukee Electric R. & Light Co.* 107 Wis. 493, 83 IST. W. 851 ; *Pedriek v. Eipon*, 73 Wis. 622, 3 L.E.A. 269, 41 N". W. 705 ; *Bell v. Platteville*, 71 Wis. 139, 36 K W. 831; *Stone v. Oeonomowoc*, 71 Wis. 155,

36]Sr. W. 829 ; Gilkey v. Merrill, 67 Wis. 459, 30 IST. W. 733, and cases cited; Sage v. Fifield, 68 Wis. 546, 32 W. W. 629; Harley v. Lindemann, 129 Wis. 514, 8 L.R.A.(]Sr.S.) 124, 109 IST. W. 570; Foster v. Rowe, 132 Wis. 268, 111 K W. 688; Carstens v. Fond du Lac, 137 Wis. 465, 119 K W. 117; Wast V. Eden, 89 Wis. 610, 62 IST. W. 409.

It has been sometimes said by law writers and courts that this rule rested upon the consideration that, if one suit could be maintained in such case, each person affected might also bring suit, and thus the defendant be ruined by litigation. This consideration has special significance and force in a state where the law permits suits to be brought by private persons against administrative officers charged with the duty of enforcing the law. Few officers would attempt an efficient administration at such risk, and the ultimate result must be either injustice or inefficiency. But there is another reason for the rule, which lies deeper and upon a broader foundation of governmental policy. That is the policy which places the prosecution of public wrongs in the hands of the public prosecutors and out of the hands of those who may be actuated by private revenge or gain, malice, or political intrigue. Biemel v. State, 71 Wis. 444, 37 N. W.

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244, 7 Am. Crim. Rep. 556. If the state, as a sovereign, is to have its proper and lawful recognition in our jurisprudence, it is, in the absence of statute, subject to no defense of laches, no limitation of time, and no liability to suit; and it must also be regarded as the repository of governmental policy and political discretion. When and how it will assert and enforce its sovereign prerogatives is often a political question, a matter of state policy; and to leave these great questions in the hands of every private litigant has a tendency to create confusion in jurisprudence, lack of wisdom in state policy, and contempt for authority. In the great case of Atty. Gen. v. Chicago, M. & St. P. E. Co. 35 Wis. 425, Chief Justice Eyan said at page 529 : *'Eelief against public wrong is confined to informations by the attorney general." See further for illustration Saylor v. Pennsylvania Canal Co. 183 Pa. 167, 63 Am. St. Eep. 749, 38 Atl. 598. The victim of robbery, battery, or arson may have a private action for damages against the wrongdoer, suspended, according to some, until the pending public or state prosecution is at an end, and not concluded by the result of the public prosecution. But there there is coincident and contemporaneous with the public wrong a private wrong suilered by the victim, distinct and different from that suffered by any other member of the public. Where all are affected alike by the wrongful act, the language of the cases and many of the actual adjudications indicate that there is no private actionable wrong, -not merely a lack of remedy. Cases infra and supra. An exception to these general rules was recognized in the case of taxpayers, first in this state, I think, in Peck v. School Dist. 21 Wis. 516, and this doctrine received the approval of the Supreme Court of the United States in Crampton v. Zabriskie, 101 U. S. 601, 25 L. ed. 1070.

Since then the scope of the taxpayers' action so-called has been greatly extended by this court, and its decisions have not always been consistent.

In *Peck v. School Dist.* supra, the action was brought by certain taxpayers whose personal property had been levied upon and advertised for sale, to restrain local administrative officers from action taken contrary to statute and consequently outside of their jurisdiction, to the private injury of plaintiffs. Their remedy for this conceded private wrong would ordinarily be at law. But the contract which formed the basis for the tax was

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found to be fraudulent, thus arousing the jurisdiction of equity, and the injunction against the enforcement of the tax sustained upon the ground that, the jurisdiction of equity having once rightfully attached, it should be made effectual for the purpose of complete relief. The decision of the court was written by Chief Justice Dixon. When the question was presented about four years later in a suit by taxpayers, involving no recognized ground of equity jurisdiction, but showing the plaintiffs to be taxpayers threatened with the enforcement of an illegal tax, precisely as it is presented by the complaint in the instant case, except that there it was averred the local administrative officers acted without their statutory jurisdiction, while here it is averred that the legislature of the state acted without its constitutional jurisdiction, the same distinguished jurist, denying the injunction, said, among other things: "The general principle that equity possesses no power to revise, control, or correct the action of public political or executive officers or bodies is, of course, well understood. It never does so at the suit of a private person, except as incidental and subsidiary to the protection of some private right or the prevention of some private wrong, and then only when the case falls within some acknowledged and well-defined head of equity jurisprudence. It is upon this principle that bills to restrain the collection of a tax have in general been dismissed [citing cases]. But there are other reasons why equity will refuse its aid in a case like this, and which are most ably pointed out in the opinions in *Doolittle v. Broome County*, 18 N. Y. 155, and in *Sparhawk v. Union Pass. R. Co.* 54 Pa. 401. The grounds are too remote, intangible, and uncertain, and the public inconvenience which would ensue from exercise of the jurisdiction would be enormous. It would lie in the power of every taxpayer to arrest all proceedings on the part of the public officers and political bodies in the discharge of their official duties, and assuming to be the champion of the community, to challenge them in its behalf to meet him in the courts of justice to defend and establish the correct-

ness of their proposed official acts, before proceeding to the performance of them. A pretense more inconsistent with the due execution of public trusts and the performance of official duties could hardly be imagined." *Judd v. Pox Lake*, 28 Wis. 583. This case has been cited and followed many times : *Tn Gilkey*

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V. Merrill, 67 Wis. 459, 30 E". W. 733, wherein it was expressly adjudicated that an action will not lie in behalf of a taxpayer to set aside the taxes of a city or other municipality generally, *Judd V. Fox Lake* is cited to support the rule that there must be some distinct principle of equity jurisprudence under which the case is brought, other than the mere illegality of the general taxes and its necessary and usual consequences ; in *Pedrick V. Eipon*, 73 Wis. 622, 3 L.E.A. 269, 41 N. W. 705, to the effect that the mere passage of a resolution and intent to enforce it are not sufficient to support a taxpayers' suit ; in *Sage v. Fifield*, 68 Wis. 546, 32 K W. 629, to the same effect; in *Foster v. Eowe*, 132 Wis. 268, 111 K W. 688, to the effect that no action will lie by a taxpayer in his own behalf and in behalf of other taxpayers to restrain the levy and collection of the taxes of a municipality generally. See also *Harley v. Lindemann*, 129 Wis. 514, 8 L.E.A.(N.S.) 124, 109 N. W. 570. If the equitable ground of the prevention of a multiplicity of suits could be invoked to support such a taxpayers' action, for the reason that the collection of an invalid tax will breed a multitude of suits at law to recover back the taxes, or on the ground that it will require a multitude of suits or proceedings in the nature of suits by the state to collect the taxes, then manifestly the foregoing cases were incorrectly decided, for all invalid tax levies give rise to suits to recover back the taxes, and generally the nonpayment of taxes is followed by penalties of some kind. Such suits are also forbidden by the rule which prohibits the courts to entertain suits by a private citizen to vindicate a public right, or that which prohibits a court of equity from employing its preventive remedies so as to interfere in a wholesale way with the collection of the public revenues. But I think they were correctly decided upon either ground. See *Bell v. Platteville*, 71 Wis. 139, 36 N. W. 831, and reasons there given for refusing to entertain the taxpayers' suit ; *Stone v. Oconomowoc*, 71 Wis. 155, 36 K W. 829; *Harley v. Lindemann*, 129 Wis. 514, 8 L.RA.CKS.) 124, 109 K W. 570; *Carstens v. Fond du Lac*, 137 Wis. 465, 119 IST. W. 117. In the latter case the right of a taxpayer to sue in behalf of other taxpayers is denied where the plaintiff merely seeks to relieve his property of a tax which he claims to be void. In *Giblin v. North Wisconsin Lumber Co.* 131 Wis. 261, 120 Am. St. Eep. 1040, 111 K W. 499, the cases

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are cited which hold that a decree in a taxpayers' suit is binding upon all the taxpayers and citizens of the municipality con-

cerned in the litigation. The taxpayers' suit, as both created and limited by judicial decisions in this state, has been productive of very beneficial results in preventing municipal maladministration, conserving municipal funds and property, and keeping fraudulent or erring municipal officers within their jurisdiction. But the fact that it has cured some ills does not prove it a panacea. It has its limitations, as above shown, founded upon sound policy even with respect to subordinate municipal officers. For stronger reasons, those limitations must be applied when the suit is state wide in its operation, and is, in effect, a suit against the state to prevent the entire state levy and collection of a tax, on the averment that the law sought to be enforced is unconstitutional. The state as such has immunity from actions except where expressly authorized by statute, and here no such statute exists covering the instant case. The state officers in the execution of a law have a wider latitude of discretion than municipal officers. Taxpayers' suits against the latter are brought to vindicate some law, here to annul a statute. The taxpayer here attempts to represent a large constituency, and the arrest by injunction of all the taxes of the state surely implies a wider scope of power, larger interference with administrative officers, and multiplication of the serious consequences mentioned in the quotation from *Judd v. Fox Lake*, *fiupra*.

It seems apparent that, under the decisions of this court, the first action cannot be supported as a taxpayers' action based upon the avoidance of a multiplicity of actions at law or suits in equity. The other ground averred in support of the complaint is, as said, based upon the claim that each taxpayer of the state has an equitable proprietary interest in the funds in the state treasury or an interest of such a nature that equity will recognize it, and protect it by injunction against the constitutional fiscal officers of the state, to prevent them from paying out of such treasury funds for the execution or administration of an unconstitutional law under the rule applied to municipalities in *Land, Log & Lumber Co. v. McIntyre*, 100 Wis. 245, at page 256 op., 69 Am. St. Rep. 915, 75 N. W. 964; *Cole's Estate*, 102 Wis. 1, 72 Am. St. Rep. 854, 78 N. W. 402, and other

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cases ill this court. But the situations are not analogous. The state is not to be put upon the level of a private or of a municipal corporation. The former is the sovereign; the latter the subjects. The courts have jurisdiction in an action against a municipality as against a natural person. They have no jurisdiction of actions against the state except with the consent of the state expressed by the legislative branch of the government and approved by the executive. Unlike the Federal Constitution and the Constitutions of most of the states, the Constitution of this state creates and recognizes not three, but four, branches of government — legislative, executive, administrative, and judicial. Administration is logically, and in most cases legally, recognized as an exercise of the executive power. The heads

of the great administrative departments of the United States government derive their power from the grant of executive power in the Federal Constitution, and their lawful acts are treated as acts of the chief executive ; and in some instances an injunction against them to prevent the enforcement of law challenged as unconstitutional was put upon the same level as a like injunction against the President. *Mississippi v. Johnson*, 4 Wall. 475, 18 L. ed. 437 ; *Georgia v. Stanton*, 6 Wall. 50, 18 L. ed. 721, and cases in *Rose's Notes*. The administrative officers named in article 6 of our state Constitution are secretary of state, treasurer, and attorney general for the state, and sheriffs, coroners, registers of deeds, and district attorneys for the counties. Among the duties of the secretary of state prescribed by the Constitution is that "he shall be ex officio state auditor." There is no general grant of the whole administrative power to any one of or to all these officers, and doubtless this and § 4 of article 5, which requires of the governor that "he shall expedite all such measures as may be resolved upon by the legislature,, and shall take care that the laws be faithfully executed," is sufficient authority for the legislature to impose upon the governor and upon subordinate administrative officers, like the state tax commissioners, all necessary administrative powers not by the Constitution vested in the administrative officers therein mentioned. There is also found in our state Constitution some express limitations upon the power of the legislature over the funds in the state treasury, and some restrictions of that power by necessary implication. Instance, § 18 of article 1, which

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provides that no money shall be drawn from the treasury for the benefit of religious societies or religious or theological seminaries; also § 2, art. 8, which forbids an appropriation for the payment of any claim (except claims of the United States and judgments) not filed within six years after the claim accrued ; and there are others. *State ex rel. New Richmond v. Davidson*, 114 Wis. 563, op. of Dodge, J., at page 580, 58 L.E.A. 739, 88 N. W. 596, 90 K W. 1067. There are restrictions by necessary implication, as § 1, art. 10, which provides that the compensation of the superintendent of public instruction shall not exceed the sum of \$1,200 annually. *State ex rel. Raymer V. Cunningham*, 82 Wis. 39, 50, 51 W. W. 1133. But these only accentuate the application, to all other treasury disbursements, of the rule fundamental in popular representative governments, that the popular branch of the state legislature, or the legislative branch of the government, shall control the public purse. *Expressio unius est exclusio alterius*. In no system is the judiciary the guardian of the public treasury except as the Constitution, by restrictions upon legislative power in this direction, may have so provided that a judicial controversy not involving political discretion may arise. The manner in which appropriations of money must be made is regulated, and there is a general provision, recognizing the authority of the legislative branch of the government over the public funds, to the effect that no money shall be paid out of the treasury except in pur-

suance of an appropriation made by law. There is in the instant case an appropriation made by law, but it is contended that this appropriation, being made for the purpose of administering or carrying into effect an unconstitutional law, is itself unconstitutional. What provision of the Constitution does it conflict with if we suppose the premises correct? The state legislature is not expected to find a grant of power to it in the state Constitution. Where there is no restriction, it possesses the power. *Com. v. Plaisted*, 148 Mass. 375, 2 L.R.A. 142, 12 Am. St. Rep. 566, 19 N. E. 224. There is no such restriction upon the power of the legislature over the public funds. On the contrary, it may well be within the duty, at least it is within the discretion, of the legislature that all laws, even invalid laws, be enforced, and thus brought to the test before the courts in the ancient well-understood and lawful way. But, in any

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event, the courts have no authority to interfere by injunction, and thus forestall attempts to enforce the law. This because the taxpayer has no interest in the funds in the public treasury to restrain these officers, and because the court has no power to create such an interest in the taxpayer, and because the court does not possess the power where no constitutional interdict intervenes to control the disbursements of public funds as against the legislative branch of the government. But of this hereafter.

It further seems to me obvious that a suit by a taxpayer against such fiscal officers of the state, based upon the claim that a statute is unconstitutional, is a suit by a private person against the state not going upon any apprehended destruction or confiscation of his property or clouding his title, as we say in legal phrase not *quia timet*, but ostensibly as champion of the public interests and in self-assumed protection of public funds, but really to avoid payment of the tax by arresting the power of the state in its attempt to execute the law by furnishing the funds for that purpose. That this is a suit against the state is settled by authority here and elsewhere. It falls within the rule of *State ex rel. Drake v. Doyle*, 40 Wis. 175, 22 Am. Rep. 692, sixth paragraph of opinion and the cases there selected for approval. *Stephens v. Texas & P. E. Co.* 100 Tex. 177, 97 S. W. 309 ; *Lord & P. Chemical Co. v. Board of Agriculture*, 111]Sr. C. 135, 15 S. E. 1032; *State ex rel. Hart v. Burke*, 33 La. Ann. 498 ; *Poindexter v. Greenhow*, 114 U. S. 270, 29 L. ed. 185, 5 Sup. Ct. Eep. 903, 962, and cases in *Rose's Notes*, and *Fitts v. McGhee*, 172 U. S. 516, 43 L. ed. 535, 19 Sup. Ct. Rep. 269, are in point, and other cases can be found. Quoting from the last cited case: "If because they were law officers of the state, a case could be made for the purpose of testing the constitutionality of the statute by an injunction suit brought against them, then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney general, based upon the theory that the former as the executive of the state was, in a

general sense, charged with the execution of all its laws, and the latter, as attorney general, might represent the state in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of

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questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to the states of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons." See also *Ex parte Young*, 209 U. S. 157, 52 L. ed. 728, 13 L.E.A. (N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, et seq. op.

But there emerges here what is perhaps a larger question. To say that the courts have jurisdiction to review statutes at the suit of any taxpayer of the state who seeks to enjoin the payment of moneys out of the state treasury for the administration or enforcement of those statutes is to establish a general advisory jurisdiction in the courts over all legislation before any actual judicial or justiciable controversy has otherwise arisen. I may safely say, that no statute is received with unanimous approval. A taxpayer may always be found. It is no answer to say that the court has a discretion as to when it will recognize this right of the taxpayer or issue its injunction. That only changes the principle which it is sought to ingraft upon our form of government, to the extent that we are to modify the statement of it by saying: "The courts have the power in their discretion to review all legislation," etc. To my mind it is an obvious fallacy to say that this power or this discretion extends only to the review of unconstitutional statutes. As well might one say that courts had jurisdiction to try only guilty persons charged with crime. The inquiry proposed is whether or not the act in question is unconstitutional, and it is to entertain such inquiry and decide it for or against the validity of the statute that the jurisdiction exists if it exist at all. To recognize a power resident in the courts by which that branch of the government could supervise legislation in this way would be to create a radical change in our plan of government as heretofore understood. This must be quite apparent to those who have extended their legal studies beyond the minutiae of adjudged cases and the rules of private right, and have acquired some knowledge of the principles of government. All revenue measures and most other statutes involve some charge upon the public treasury for their administration. All acts of the legislature involve the expenditure from the state treasury of at least printing and publishing. Therefore all stat-

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utes would at this preliminary stage be subject to judicial review. In reply to a suggestion of this kind from the bench, one

of the learned counsel for plaintiffs suggested that this expense was so small that a suit would not be entertained because de minimis non curat lex. But this answer overlooked the cases of *Mueller v. Eau Claire County*, 108 Wis. 304, 84 N. W. 430, and *Chippewa Bridge Co. v. Durand*, 122 Wis. 85, 108 op. 106 Am. St. Eep. 931, 99 N. W. 603, wherein it was held that the court will not inquire into the amount or extent of the taxpayer's interest so long as he is a taxpayer. Besides, it overlooked the consideration that in a Republic founded upon the equality of its citizens before the law, it would be quite inconsistent with fundamentals to rest the jurisdiction to review legislative acts at this preliminary stage of their existence upon the wealth of the taxpayer who comes in to represent himself and the public. Nor can the amount of the charge which the law imposes on the state treasury affect this question, which is one of jurisdiction. No statute gives the taxpayer an interest in the funds in the state treasury. The courts must invent that species of property right if it is to have recognition in the courts. The courts also have considerable discretion in granting or withholding injunctions. This inevitably leads to the conclusion that the court is asked to create or recognize a right not given by common law or statute, and then exercise its discretion to issue an injunction to prevent threatened invasion of this right, and all for the purpose of making an occasion or an opportunity to review the constitutionality of a statute at the preliminary stage of its existence before its enforcement is attempted, and before any controversy otherwise justifiable has arisen. To do so would conflict with the notion of constitutional law and the powers of the judicial branch of the government with reference to declaring laws unconstitutional announced in *Marbury v. Madison*, 1 Cranch, 137, 2 L. ed. 60, and many cases since. It has been said that courts never declare a statute unconstitutional, but being confronted with a judicial question which it may not evade, and with a Constitution which commands one thing and a statute which commands the opposite, they reluctantly and unavoidably obey the paramount, not the subordinate, command. The result of the grave duty thus forced upon the court is unconstitutionality of the statute, because it is incapable of en-

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forcement in the courts which speak last. But here we are asked not only to compare the statute with the Constitution, but to make the occasion for so doing, and to hold for the purpose of enabling us to do so by legislation, legal fiction, or unprecedented judicial decision, that every taxpayer has a proprietary interest in the funds in the state treasury. The controversy ^t this stage concerning the constitutionality of a statute is the same which was or might have been presented to the judiciary committees of the legislature, or to the legislature in session, the same as that waged before the governor to induce him to veto the act. It is in the nature of an appeal from the legislative and executive branches of the government to the judicial.

"The theory upon which, apparently, this suit was brought

is that parties have an appeal from the legislature to the courts ; and that the latter are given an immediate and general super- (fision of the constitutionality of the acts of the former. Such is not true. Whenever, in pursuance of an honest and actual antagonistic assertion of rights by any one individual against another, there is presented a question involving the validity of any act of any legislature, state or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not ; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act." Chicago & G. T. E. Co. v. Wellman, 143 U. S. 389, 36 L. ed. 176, 12 Sup. Ct. Rep. 400. See also Charles River Bridge v. Warren Bridge, 11 Pet. 420, 9 L. ed. 773 ; Georgia V. Stanton, 6 Wall. 50, 18 L. ed. 721 ; Mississippi v. Johnson, 4 Wall. 475, 18 L. ed. 437. An injunction will not issue to restrain the execution of an unconstitutional law merely on the ground that it is unconstitutional. Thompson v. Canal Pund, 2 Abb. Pr. 248; Birmingham v. Cheetham, 19 Wash. 657, 54 Pac. 37 ; People ex rel. Alexander v. District Ct. 29 Colo. 182, ^8 Pac. 242. I am convinced that the decision below was correct, and should be affirmed.

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In the second suit a private citizen who is also a taxpayer seeks as relator to begin in this court an action by and in the name of the state against the secretary of state and state treasurer for the purpose of enjoining them from paying out funds from the state treasury for salaries and other expenses of administering this law, and also against the members of the state tax commission, enjoining the latter from exercising the duties and powers conferred upon them by the act in question, all upon the ground that this act is unconstitutional. As against the secretary of state and state treasurer, the ostensible purpose of the bill is to protect the state treasury. As against the state tax commission the real purpose of relator, to avoid paying income tax is disclosed. No steps have been taken to enforce the law, and the time for its enforcement has not arrived. Application was by relator made to the attorney general to begin and prosecute this suit. That official refused, and the relator on this showing with the usual averments of irreparable injury, etc., seeks to arouse the original jurisdiction of this court to entertain the suit to put his private counsel in the place of

the attorney general to prosecute it, and to have the state at this stage of existence of the statute enjoin its own officers from collecting its own revenue upon the averments that the statute is unconstitutional. The constitutional grant of power to this court is that "the judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuit courts, courts of probate, and justices of the peace." Art. 7, § 2. "The supreme court, except in cases otherwise provided in this Constitution, shall have appellate jurisdiction only which shall be coextensive with the state. * * * The supreme court shall have a general superintending control over all inferior courts ; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other original and remedial writs, and to hear and determine the same." Art. 7, § 3. That portion of the last above quoted section giving power to issue the writs mentioned and to hear and determine the same was construed to confer upon this court original jurisdiction of all judicial controversies within the scope of and instituted by the issuance of such writs at common law, but it was said that the court would only exercise the power thus granted in controversies affecting the sovereignty of the state, its fran-

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ehises and prerogatives, or the liberties of its people. It was also decided that the writ of injunction found in this section, associated with the so-called prerogative writs, might also, for this reason be employed to assert the prerogatives of sovereignty. Cases collected in State ex rel. Lamb v. Cunningham, 83 Wis. 90, 17 L.R.A. 145, 35 Am. St. Rep. 27, 53 K W. 35. Rules regulating the exercise of the original jurisdiction as distinguished from the appellate jurisdiction of this court, while appropriate and desirable to facilitate our work, are not fundamental. Power is derived from the Constitution, not from such rules which only operate to regulate the manner of its exercise. They merely serve to indicate when the parties litigant should approach this court in the first instance, and when reach this court by appeal or writ of error. There is, I think, a marked inconsistency between such cases as State ex rel. Drake v. Doyle, 40 Wis. 175, 22 Am. Rep. 692, Re Hartung, 98 Wis. 140, 73 K W. 988, and State ex rel. Stengl v. Cary, 132 Wis. 501, 112 N. W. 428, and other cases found in our reports and referred to in the opinion written by Chief Justice Winslow herein. I am quite satisfied with the opinion of the court in this respect, but fear it will meet the usual fate of mere judicial warnings, and be again disregarded when a new exigency arises. The Constitution vests in this court only judicial power, thus excluding by implication political, administrative, and legislative power. The power to institute a suit by and in the name of the

state cannot logically be said to be an exercise of judicial power. It is rather executive or administrative. The attorney general, district attorneys, the governor, and other officers possess this power, although they exercise no judicial power. It is only by historical associations of the words "judicial power," as distinguished from scientific definition, that the act of instituting a suit in court in the name of the state can be called an exercise of judicial power. Assuming it to be settled by precedent that the judicial power mentioned in our Constitution is that power formerly exercised by the court of King's bench and the chancery courts in England, still that power fell short of authorizing an attack, by suit, upon the acts of co-ordinate departments of government, by any writ, before any legal controversy had arisen by the attempted execution of such acts. How, then, did this court acquire jurisdiction to authorize the institution

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of and then to entertain such a suit? Neither logical analysis of the term "judicial power," nor historical association, warrants the exercise. The restriction of suits against the state is quite impotent if every taxpayer of the state, while he cannot make the state a defendant in his suit, may nevertheless make the state a plaintiff in a civil action against the same state officers to fight his battle for him. If these state officers represent the state in an action against them to restrain them from enforcing the law, they occupy the same legal position, and make the same claims when this form of making the state plaintiff is complete. We can hardly say that the controversy has become a suit by the state against the state, for that would be absurd. We cannot liken the state to a trustee seeking the advice and direction of the court, for that presupposes a supervisory jurisdiction over the trust and in the court, and begs the question. We cannot find an analogy in the governments of those states like Massachusetts, where the governor or the legislature may call upon the court for an opinion in advance of enactment and of litigation, because there it is conceded that the courts in giving such opinion act not in a judicial, but in a political, capacity. Opinion of the Justices, 126 Mass. 557, 566. Turn this as we will, we are always confronted with the fact that, whether the taxpayer is plaintiff or the state plaintiff, the suit involves a claim on the part of this court of power to revise and review acts of the legislature with reference to their constitutionality, before any judicial controversy has arisen other than a controversy nursed into life and existence by this court for the purpose of such revision.

All that I have said and quoted with reference to the action in the name of the taxpayer on this point applies to this action. Of the two I would prefer the taxpayers' suit, because this is subject to the same weakness and also savors of subterfuge. Sovereignty is one and indivisible. But in the exercise of sovereign power all the great departments of government must concur. The manner of this concurrence is regulated by the division of governmental powers in the Constitution, and the lim-

itations placed upon each department arising from this division or from express or necessarily implied restrictions found in the organic law. This sometimes impairs efficiency, but it promotes liberty. The most promptly efficient government is a despot-

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ism. It is the wisdom of the spendthrift which sacrifices future advantage for immediate gratification. The statesmen who founded the American Republic understood these things, and made deliberate choice between a government of liberty and one of temporary and prompt efficiency. The result thus far has justified their judgment. In the prevailing plan of government the guardianship of the funds in the public treasury, except when otherwise specially provided, is committed to the legislative branch of the government, which is responsible to the people. The judicial branch of the government is to take no part in political questions. In consummation of the exercise of the sovereign power, it is to act last, and to act only when aroused by an actual judicial controversy. Until it comes before the court incidentally in such controversy, the question of the constitutionality of a statute is a political, not a judicial, question. There is therefore no jurisdiction resident in the courts, as there is in the legislature and the governor, to declare an act unconstitutional in advance of a judicial controversy which necessarily involves that question. The court, therefore, has no jurisdiction to create such controversy by authorizing what is, to my mind, a fictitious suit in behalf of the state against its own officers, where the ground for such a suit is that these officers are about to collect taxes under a general tax law. That is merely a statement of the rule that what cannot constitutionally be directly done cannot be done by indirection. The latter breaks down the American republican form of government as well as the former.

Examining from another viewpoint. In a case where a bounty was granted to manufacturers of sugar by Congress, and the disbursing officer of the treasury refused payment under the belief that the act of Congress was unconstitutional and the statute authorized a suit against the United States, an actual justiciable controversy thus arose. But even here and under a Constitution carrying delegated power, only the Supreme Court of the United States decided as set forth in the second paragraph of the syllabus : "It is within the constitutional power of Congress to determine whether claims upon the public treasury are founded upon moral and honorable obligations, and upon principles of right and justice; and having decided such questions in the affirmative, and having appropriated public money for Foster Income Tax. - 84.

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the payment of such claims, its decision can rarely, if ever, be

the subject of review by the judicial branch of the government." United States v. Eealty Co. 163 U. S. 427, 41 L. ed. 215, 16 Sup. Ct. Eep. 1120, approved in Allen v. Smith, 173 U. S 389, 43 L. ed. 741, 19 Sup. Ct. Eep. 446, cited in State ex rel. Garrett v. Froehlich, 118 Wis. 143, 61 L.E.A. 345, 99 Am. St. Eep. 985, 94 IsT. W. 50. If we compare the instant case with the above, we will find that here no justiciable controversy has arisen, but the court is asked to make one by authorizing a suit in the name of the state upon the petition of a taxpayer, and that here we are asked to decide in such suit that the legislature which possesses all power not forbidden had no power or discretion to make an appropriation of public moneys for the purpose of enforcing a statute passed by its legislature and approved by its executive. I think this court has no jurisdiction so to do. For the court to decide before its judicial power is aroused by a legal controversy is to assume a jurisdiction not given to it by law.- I think the assumption of such jurisdiction changes the form of government as heretofore established and understood, and therefore we are justified in disregarding or overruling precedents in this court which might, by mere logical inference, seem to support this suit. I think we should have the courage to stop before taking this last step fraught with such consequences.

In this connection, I wish to mention the case of State ex rel. Eosenhein v. Frear, 138 Wis. 173, 119 K W. 894, which was a motion for leave to bring suit in the name of the state. When that motion was presented, it will be remembered by those present that I protested vigorously from the bench against coimtenancing any such proceeding. I thought then, and I still think, that the suit there suggested was preposterous. If the legislature of Wisconsin had not been a body of rather feeble temper, it might not be entirely discreet for judicial officers to assert the right to launch and determine such a suit. But the motion was denied, and I regret to say that I gave no careful attention to the language of the opinion denying the motion, and neglected to dissent therefrom. I do not think either that the complaint states a cause of action in favor of the state and against its officers. The mere fact that taxes will be collected from a large number of its citizens by the state authorities for

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the state creates no actionable -wrong against the state. All general laws affect all the people of the state, and all police regulations curtail their rights or liberties to some extent. But this gives no right of action to the state. Neither can a general tax law, be it ever so new. The notion that the state has a right of action to test such laws is, to say the least, very novel. Nor does the fact that a law which appears on its statute books and is about to be enforced at some expense upon the state treasury do so. It is the legal and constitutional way in which to handle a law whether that law be valid or invalid. It is the proper mode of getting that law before the courts. It merely amounts to saying that the officers of the state are about to enforce the

state statutes in such manner as to create justiciable controversies which will thus come before the court in the ancient established and orderly way. Surely such attempt is not actionable. If the statute is valid, it is their duty to enforce it ; and it is, in any event, their duty to obey it until it is held to be invalid by the judicial branch of the government in a judicial controversy of which the latter branch has jurisdiction. If the legislature has discretion to recognize merely moral obligations and appropriate money for their payment, it surely may appropriate money for enforcing even a void act, and thus bringing it to the judicial test in an actual controversy. It may be that in the march of progress and the evolution of governments the change in the plan of our government created or confirmed by the decision herein is inevitable. But I distrust, and I think not through timidity, the steady progress of this court always in the direction of grasping more power. This will establish the judiciary as a political branch of the government, and displace it from that place of dignified impartiality which it has so long and so successfully filled. This extension of power is the progress which has always resulted in the wreck of human institutions. I have now made my protest against it in *Ee Revisor*, 141 Wis. 592, 124 K W. 670, 18 Ann. Cas. 1176, in *State ex rel. Kustermann v. Board of Canvassers*, 145 Wis. 294, 130 N. W. 489, in *State ex rel. Eosenhein v. Frear*, 138 Wis. 173, 119 N. W. 894, in *Lawler v. Brennan*, 150 Wis. 115, 134 N. W. 154, 136 N. W. 1058, and in the instant case, and so discharged what I conceive to be my duty. In any view of the case, even that taken in the majority opinion, it seems to me

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the second action should be dismissed for want of jurisdiction as against the secretary of state and the state treasurer. But I consider that this court has, under the Constitution of this state, no jurisdiction to review the statute at this stage of its existence and in this way in either case. , -The assumption of the jurisdiction so to do cannot be justified upon the comparative futility of such review demonstrated by the result in this case.

Maeshall, J., filed the following additional opinion March 15, 1912 (148 Wis. 542, 135 N". W. 164) :

I fully determined to write, at length, in substitution for the above. On further reflection it seems to do so might give unwarranted dignity to some suggestions voiced in these cases which were, as is supposed, effectually foreclosed more than a century ago, and so are not, generally, and should not, efficiently, be deemed open for discussion.

After the uniform holdings here, through many important adjudications, that public money in the public treasury is a subject of trust for all the people for public purposes, and disburseable only pursuant to valid legislation, and that every taxpayer is a cestui que trust, having sufficient interest in preventing

abuse of the trust to be recognized in the field of this court's prerogative jurisdiction as a relator in proceedings to set sovereign authority in motion by action in the name of the state for prevention or redress, any suggestions to the contrary, however well supported as an original proposition, might well have but a passing notice. The same is true of the question of whether an action against a state officer to prevent disbursement of public money in the enforcement of an invalid act of the legislature is against the state in any proper sense. It has been held over and over again, in terms or in effect, that such an action is to be regarded as against the person in his individual, not his official, capacity, and so not against the state, — so held very recently most significantly by the Supreme Court of the United States in *Ex parte Young*, 209 U. S. 123, 52 L. ed. 714, 13 L.K.A. (KS.) 932, 28 Sup. Ct. Eep. 441, 14 Ann. Cas. 764, followed here in *Bonnett v. Vallier*, 136 Wis. 193, 17 L.R.A. (N.S.) 486, 128 Am. St. Eep. 1061, 116 K W. 885.

It is essential to strictly maintain here the foregoing stated

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principles. Only by so doing can this court fully perform its great function as the supreme efficient conservator, defender, and preserver of the inherent and guaranteed rights of the people. The court will not swerve from the proper course for which it was given independent status, "through fear, favor, affection, or hope of reward." I know every member of it is firm in that. No unreasonable impatience elsewhere, if such exists, will be permitted to interfere with the sturdy performance of constitutional duty here. While paying due deference to co-ordinate departments, it must expect that deference in return. There must be no hesitation through fear of censure or thought of tuning the judicial harpstrings to harmonize with temporary conditions, as we here advocated outside at times. In that there is no division of sentiment here.

I have too much respect for the law-making power to indulge the idea that there is any dominating thought there hostile to the willing performance of duty here to test enactments by constitutional restraints on all proper occasions, and put the stamp of judicial disapproval thereon when manifestly required, because of the enactment being evidently not law in fact, though law in form; and too much respect for the average legislative sentiment not to see through the vista of momentary impatience, — sometimes exhibited, at the failure of legislative effort, — to the considerate judgment of after-reflection, which may always be depended upon to approve and honor full performance of judicial duty, to appreciate that when there is a conflict between an act and the Constitution, as seems to the court created to view the matter, it must decide between them, and "as the Constitution is superior to any ordinary act of the legislature, the Constitution, and not the ordinary act, must govern the case to which they both apply." *Marbury v. Madison*, 1 Cranch, 137, 2 L. ed. 60. On the other hand, I have too high regard for the

great trust reposed in the instrumentalities chosen for now to give vitality to the judicial function, to think that, if there be any considerable sentiment momentarily elsewhere inimical to full performance of duty here, it can exert efficient influence in that regard. Generally speaking, I apprehend the sentiment of the public is in favor of a prompt, thorough treatment of constitutional questions as they arise. The people want to know, and have a right to know, and legislative instrumentalities

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desire to have them know, at the earliest practicable moment, just where they stand with reference to important new, far-reaching enactments.

The fundamental law, as it has been construed, and the function of this court as to applying the rule of the Constitution to legislative enactments and using its prerogative power against anyone assuming to act for the state who would otherwise interfere with guaranteed rights under the guise of an invalid enactment, must be maintained. No one can win enduring fame by failing to appreciate that and be ready to vigorously vindicate it.

The court, with practical unanimity, reached the conclusion that all constitutional questions presented and argued in the cases, in some of them, were within the court's power to consider and decide ; but to what extent to respond was within its discretion. That left much to judicial propriety, convenience, exigency, and expediency, resulting in the court going only so far as was vital to the existence of the commission, with power to enforce the dominating features of the law. Not to go that far was thought would be well nigh, if not quite, abuse of discretion; not doubting competency to go further and decide all important questions so ably discussed. Obviously there is left a broad field for very much and very perplexing litigation, to the probable great prejudice of public and private welfare. The field so left untouched was as fully covered by eminent counsel as it is liable to ever be. The whole crop of legitimate controversies was fully ripe for the judicial harvest. All interests called loudly for the chosen instrumentality for the work to grapple with the proffered task. In my opinion, the waste of energy and expense attributable to failure to do so might well have been avoided. It was according to precedent to take the course adopted, I confess. But should precedent efficiently bar the wheels of progress toward a more full response to such an appeal for judicial determination ? It seems not.

This court can well view with satisfaction its progressive course as to meeting judicial controversies squarely, casting aside the ancient method of dilatory, fencing, mere piecemeal decision, delaying the finality by technical dispositions, depleting to public and private resources, and disappointing and exhausting to those resorting to the courts for redress and preven-

tion of wrongs. There is room for further progress. Impatience with the law's delays, sometimes significantly manifested, will disappear without any change in the law of procedure, by changes of method within the province of the court to make of its own motion, demonstrating that the fault supposed to exist is, in the main, in the administration of the law, rather than in the law itself.

Seeming opportunity for worth-while progress is most inviting in cases like those before us. Where a new law which is questioned as to its meaning and its legitimacy in many important minor features as well as the dominant one, — a law of far-reaching character, materially affecting the people generally and bristling with complications, each presenting, from some reasonable standpoint, serious difficulty, is brought early here for examination in all such aspects, — brought by the exercise of prerogative power, so that all the people, as it were, are represented at the bar to the end that the enactment, so far as valid, may be vigorously enforced and cheerfully submitted to, and the mischiefs ordinarily flowing from such a course for a time and the law then being found full of infirmities, may be avoided, why should not the earliest opportunity afforded be willingly taken to carry the whole mass of things to the consultation room and patiently and finally solve the uncertainties, thus promptly affording peace to the state and its people in respect to the matter? The power exists to do it. Universal acclaim is in favor thereof. We are here to vitalize the power intrusted to us to do it. We have time therefor. We are as able now for the task as we probably ever will be. If we have not had as efficient help as we are likely to have at any future time, the power is ample to call for and obtain further assistance from eminent advocates of opposing theories. Then why hesitate? Is there any good reason for it?

I cannot perceive any satisfactory answer in the affirmative to the foregoing. Hesitation is largely from judicial custom to delay grappling with questions so long as possible, with the thought that time will either render doing it unnecessary, or a decision may perhaps be later made under more favorable circumstances, and habit to minimize judicial labor where practicable without affecting the grade of it, to the end that each of the controversies brought here may have its due proportion of

attention. I confess the court's burdens are heavy and that the easiest way of escape from danger, if any exists, of which I must say I am not conscious, of its being unduly so, is by limiting decisions to actual necessities of cases as they arise. That was for a time given as a sufficient justification for limiting activity of prerogative jurisdiction to a very narrow field and limiting it therein to the essentials of each particular situation. State ex rel. Board of Education v. Haben, 22 Wis. 101 ; Re Court of Honor, 109 Wis. 625, 85 N. W. 497.

While the scope of the prerogative power was early definitely stated, and it has thus been maintained, if the burden of work here was ever a legitimate excuse for not exercising jurisdiction, within such scope, to make a full decision in a case thought to be of a character to warrant the court in stepping aside from its ordinary labor to entertain it at all, that ended long since. When such doctrine took root there were but three members of the court and the equipment for labor was very crude compared to that now afforded. There is certainly no longer need for leaving anything undone which might properly be done, because of the burden of work.

So, again, the inquiry is suggested, why should not the court in all cases of great public interest, make the fullest practicable decision instead of leaving as much ground uncovered as practicable? In such a situation as this it seems that the court should not cease its labors till the whole subject in all important details shall have been exhausted. If any such shall not have been fully presented, or been overlooked, opportunity should be given, if help can be reasonably expected thereby, for further discussion at the bar, so in the end that the court may furnish executive officers and the people a plain, certain guide to go by. I urged that at first and again on the motion for rehearing. There are many important questions left undecided. Each may furnish ground for expensive litigation. To settle all in detail will require large public and private expenditure which must be charged to waste. Conservation of time and money and peace, avoiding all such waste, can be effected by just a few days' more time now, which could well be spared to devote to the matter.

A motion for a rehearing was denied March 12, 1912.

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UNITED STATES SUPREME COURT.

SAMUEL HAIGHT, Plff. in Err. v. THE PITTSBUEG,
FT. WAYNE AITD CHICAGO EAILEOAD COM-
PANY.

[See S. C, 6 Wall., 15-18, 18 L. ed. 818.]

Clause In railroad mortgage - effect as to tax - right of company to deduct tax from coupons.

A clause in a mortgage made by a railway company that the company shall pay the principal and interest without any deduction for any taxes or assessments whatsoever has no application to the income tax of bondholders under the 122d section of the Internal Revenue Act of 1864.

The company is authorized to deduct or withhold the amount of such when paid by it, from the coupons or interest due by it on such mortgage and the accompanying bonds.

[No. 301.]

Submitted Jan. 29, 1868. Decided Feb. 10, 1868.

In error to the Circuit Court of the United States for the Western District of Pennsylvania.

The following is a copy of the opinion of the court below, containing the statement of the case referred to and approved in the opinion of this court:

"On the 10th day of April, 1857, Samuel Haight and wife conveyed to the Pittsburg, Fort Wayne and Chicago Railway Company a lot of ground in the City of Pittsburg for \$105,000. \$5,000 was paid in hand, and for the residue of the purchase money, Mr. Haight received one hundred bonds of \$1,000 each, with coupons attached, bearing seven per cent., payable semi-annually. Those bonds are secured by mortgage on the premises, containing in the clause of defeasance the usual stipulation, 'without any fraud or further delay, and without any deduction, defalcation, or abatement, to be made of anything for, or in respect to any taxes, charges, or assessments whatsoever.' By the Internal Revenue law the interest upon those bonds is subject to a tax of five per cent.

The bonds have nearly twenty years yet to run, and the mortgage upon the above recited clause of which it is claimed the defendants have incurred the liability to pay this tax, could

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not be sued for foreclosure until a year and a day after the maturity of the bonds. As the mortgage is a mere security for the payment of the bonds and their accruing interest, their satisfaction would be its discharge. We must then recur to the coupons, upon which property this suit is instituted. What are they but income — the annual profit upon money safely invested ? There is no special contract to pay government taxes upon the interest. The measure of the defendants' liability is expressed in the bonds as being debt and interest only. They have nothing to do with the taxes which the government may impose upon the plaintiff for the interest payable to him. The clause in the mortgage cannot enlarge the obligation which the mortgage was given to secure ; that is, the payment of debt and interest. It is to be found in all mortgages, and if the doctrine

contended for by the plaintiff be sound, the standard by which the imposition of taxes should be regulated would be in proportion to a man's poverty and not his wealth; for the mortgagor would be bound to pay,, not only his own taxes, but those of the mortgagee. It was admitted at the argument that the plaintiff, a citizen of ISTew York, paid no internal tax on these bonds at the place of his residence. It is, therefore, no case of double taxation. It was to be paid somewhere, and it was to meet investments like this in banks, railroads, insurance and other companies, that the 122d section of the Act of 1864 was passed. Congress enjoined it as a duty upon all such corporations to deduct and withhold from all payments on account of any interest or coupons and dividends due and payable, the tax of five per cent. ; and provided that the payment of the same shall discharge the said companies from that amount of the interest or coupon, unless where said companies have contracted otherwise. And it was properly so provided, for citizens of the United States, resident both at home and abroad, sometimes forget the institutions in which their capital is invested."

Judgment having been entered in accordance with this opinion in the court below, the case was brought here on a writ of error.

Mr. Joseph Knox, for plaintiff in error :

The plaintiff contends that the Company cannot deduct the taxes set forth in the stated case from the interest due the plaintiff, because it has, in the language of the Act of Congress, ""contracted otherwise."

In discussing the question, the defendant and the court be-

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low were brought to the conclusion adverse to the plaintiff, by liolding that the tax imposed in the 122d section was a tax on the income of the plaintiff as income, and not a tax on the thing •or interest of the bond. When this section is read by itself and without reference to the other sections, this construction appears to be the natural one; but when the whole Act is read, we think that the better construction is, that the tax is imposed -on the thing and not on the income.

See Acts of July 1st, 1862; March 3d, 1865; July 13tb, 1866; March 2d, 1867; June 3d, 1864.

Messrs. W. H. Lowrie and Robert McKnigM, for defendant in error:

The whole duty of the defendant to the plaintiff is shown by the bonds and coupons, and they show no contract to pay taxes. The mortgage is merely collateral security for the performance •of these, the principal contracts, and when it is satisfied the mortgage is functus officio and must be discharged. It is un-

reasonable to suppose that a principal contract is intended to be enlarged by giving security for its performance.

The clause relied on by the plaintiff is common to all mortgages, in its substance at least, and its purpose is plain. The legal title is by the mortgage, in form at least, transferred to the mortgagee and, in possession or not, he may possibly be subject to the taxes on the land, or the mortgagor may pay them while the title is in the mortgagee ; and this clause means that in that case the mortgagee shall not be required to give back the land or the title without being refunded all taxes thus paid by him, or kept clear of all, as well as paid the principal debt and interest. Men everywhere will be surprised if it be decided that this is a contract to pay all taxes on the debts secured by such mortgages ; for there are state as well as federal taxes on debts bearing interest.

The condition annexed to the collateral security means merely to regulate the terms on which the pledge is to be held or applied or resorted to, and affects only the title to that. If that be not needed for the enforcement of the principal contract, then the contract of pledge with all its conditions goes for nothing. Its conditions cannot be transfused as contracts with the principal obligation.

This is a tax upon a part of plaintiff's income, and it is quite absurd to suppose that the defendant intended a contract to

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pay that, irrespective of the place where the plaintiff might reside, and be taxed for his income, whether in ITew York, London, Algiers or Japan.

This is clearly a tax on the plaintiff, and he never would have thought of charging it to defendant had it not been for the peculiar way in which, for the convenience and advantage of the government, it is collected; it is not because of this form, any less the plaintiff's own tax paid by him according to law, and not one which the defendant has contracted to pay.

The cases of taxing ground rents and the land out of which they issue bear some analogy to this. But, under a similar covenant by the terre-tenant for the payment of taxes in such cases, he is not bound to pay the taxes on the ground rent without an express covenant to do so.

Franciscus v. Eeigart, 4 Watts, 120 ; Eobinson v. Allegheny Co., 7 Pa., 161; Piatt, Covenants, 211, etc.

Here there can be no pretense that there is any such contract.

Mr. Justice Griece delivered the opinion of the court:
The facts in this case are properly stated and the law correctly decided by the learned judge of the circuit court.

The provision in the condition of the mortgage "that it shall be void on payment of debt and interest, without any deduction made for or in respect of any taxes, charges or assessments whatsoever," has reference only to covenants between mortgagor and mortgagee, and is usual in every mortgage, in order to secure the mortgagee, who may not be in possession, from a demand for taxes incurred while the mortgagor was in possession. It can have no possible application to the income tax of bondholders. The 122d section of the Revenue Act of June 30, 1864, ch. 172 (13 Stat, at L. 284), which requires all corporations "to deduct and withhold from all payments on account of any interest or coupons and dividends, due and payable, the tax," etc., was not only for greater facility of collection, but to insure its payment by foreigners who may enjoy large incomes from such securities. The corporations often contract to pay for the bondholder all such taxes ; but when they have not so contracted they are authorized to deduct or withhold the amount of the tax. In all assessments of income tax, the citizen is credited with the amount thus detained; so that here is no double taxation.
Judgment affirmed.

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UNITED STATES SUPREME COUKT.

THE NOETHERN CENTEAL EAILWAY COMPANY,
Plaintiff in Err., v. JOHN G. JACKSON.

[7 Wall., 262-269, 19 L. ed. 88.]

Pennsylvania Tax Law - effect of, on coupons - Act of June 30, 1864- of March 10 and July 13, 1866.

Pennsylvania law taxing money owing by solvent debtors, by bond or otherwise, is not operative upon coupons of bonds upon a railroad company lying partly without the State.

By the Act of June 30, 1864, it was not the intent of Congress to impose an income tax on non-resident aliens.

Whether the subsequent Acts of March 10th and July 13th, 1866, which imposed a tax on alien non-resident bondholders, are within the power of Congress, this court expresses no opinion.

[No. 16.]

Argued Mar. 17, 1869. Decided Feb. 1, 1869.

In error to the Circuit Court of the United States for the District of Maryland.

The case is stated by the court.

Messrs. J. Mason Campbell and Bernard Carter, for plaintiff
in error :

It is submitted -

That section 122 of the Internal Revenue Act, passed June 30, 1864, covers, by express and adequate language, the whole question as far as the national tax is concerned.

The language used is plain and not susceptible in itself of misconstruction. It applies in terms to all the coupons of the class named, and to all holders of such coupons, without any other exception or reservation than the obvious one of cases covered by special contracts. No exception is in terms made in favor of aliens.

The true view taken of the 122d section of the Act of Congress of June 30, 1864, 13 Stat, at L. p. 284, ch. 173, is, that it is a tax on the whole property of the corporation ; or tax on the income of the Corporation, treating the Corporation, for this purpose, as a natural person ; and taking its whole revenue after deducting working expenses, it imposes a tax of five per

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cent, on this revenue. Now, these net earnings are ascertained, first, by taking what is appropriated to paying interest on its bonds, if any it has; and, second, by taking the amount paid for dividends to its stockholders; these two sums embrace its whole net earnings ; these are what are taxed, and the tax thus imposed having been paid to the United States, only what is left is to be paid to the holders of the bonds in the one case,, and the owners of the stock in the other.

The same principle is acted on in sections 120, 121 of same Act.

The plaintiff in error, though incorporated by the State of Maryland, has existence and is in the exercise of its powers in Pennsylvania, in consequence of the legislation of that State,, and the proceedings set forth in the record; and having its habitation as well as its property there, and issuing the bonds held by defendant in error under its laws, is subject to and embraced by the tax laws of that State.

Laws of Pa. 1854, No. 531; Laws of Md. 1854, ch. 250;
Bank of U. S. v. Deveaux, 5 Cranch, 61 ; Bk. of Augusta v. Earle, 13 Pet. 519 ; Society, etc. v. New Haven, 8 Wheat. 482 ; Binney's Case, 2 Bland (Md.), Ch. 143; E. E. Co. v. Letson,. 2 How. 497.

The 32d section of the Act of Apr. 29, 1844 (Purd. Dig., 949), enumerates the objects of taxation, and among others, "money owing by solvent debtors."

The 34th section imposes a tax of three mills on every dollar of the value of the properties enumerated in the 32d section.

The Act of May 1, 1854 (Purd. 942), places a legislative construction upon the Act of 1844.

The right to deduct the tax from the coupons is declared by the Act of April 30, 1864, sec. 3 (Purd. 1378).

These several Acts have received a judicial interpretation by the highest legal tribunal in that State, in the recent case of *Maltby v. E. & C. E. E. Co.* 52 Pa. 140.

By that decision the tax is sustained, as well as the right of the Company to deduct it from the amount of the coupons, without reference to the citizenship or residence of the holder.

This court will adopt the construction placed on the Pennsylvania Statutes by the Supreme Court of that State, in the case of *Maltby v. E. & C. E. E. Co.* 52 Pa. 140, although this de-

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cision was rendered after the decision of the circuit court now under review.

U. S. V. Morrison, 4 Pet. 124, 6 Pet. 291, 4 Wall. 217 (71 U. S. XVIII. 342).

The State of Pennsylvania, as well as the United States, had a clear right to impose the taxes in question, and the fact that the defendant in error is a British subject and resident abroad, is altogether immaterial.

The principles announced in the authorities hereto appended, support this proposition.

McCulloch v. Maryland, 4 Wheat. 429 ; *Prov. Bank v. Billings*, 4 Pet. 561 ; *Tilghman*, Ch. J. in *Milne v. Moreton*, 6 Binn. 353 ; *Ogden v. Saunders*, 12 Wheat. 358 ; *Story*, *Confl. L. sees.* 549, 550; *Harrison v. Sterry*, 5 Cranch, 289.

The taxes in question are not taxes on the person of the defendant in error, but on his property, which in this case is the debt due to him, as evidenced by the bonds of the plaintiff in error, which are secured on the whole of its property in Maryland and Pennsylvania ; this debt, for the purposes of taxation, has location here.

We deduce this proposition from the cases cited under the last point, and also from the following: 16 Pet. 447; *Gordon v. Appeal Tax Court*, 3 How. 133; *The Tax Cases*, 12 Gill & Johnson, 117.

Messrs. George H. Williams and Wm. A. Fisher, for de-

defendant in error:

The defendant in error will insist that, by the true construction of the Internal Revenue Act of Congress, approved June 30, 1864, no attempt was made to tax the incomes of persons, except of citizens of the United States wherever resident, and the incomes of residents, whether citizens or not. Sees. 116, 117, 122.

That, for like reasons, the State of Pennsylvania had no right to tax the coupons on bonds where both debtor and creditor were outside its territory, and neither of them its subject. That the Northern Central Railway Company was a Maryland Corporation, and had no legal existence as such in Pennsylvania, and the coupons were payable at the Company's office in Baltimore.

Ohio & Miss. R. R. v. Wheeler, 1 Black, 286 (66 U. S. XVII. 130) ; State v. IST. C. R. R. Co. 18 Md. 213, 216.

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That, by the true construction of the Tax Laws of Pennsylvania, no such attempt has been made. Bank of Hamilton v. Dudley, 2 Pet. 574; Swift v. Tyson, 16 Pet. 18.

Mr. Justice Nelson delivered the opinion of the court :

This is a writ of error to the Circuit Court of the United States for the District of Maryland.

The suit was brought by Jackson, a non-resident alien, against the Northern Central Railway Company, incorporated by the State of Maryland, to recover \$2,650 coupons attached to bonds issued by the Company. A copy of one is as follows :

"The Northern Central Railway Company will pay to the bearer, January 1, 1865, \$30, being a half year's interest on bond No. 1827 for \$1,000. J. S. Lieb, Treasurer."

The signature of the treasurer was admitted. The plaintiff then proved a demand of payment, at which time and place the Company offered to pay the amount, deducting the tax of five per centum per annum to the United States, under an Act of Congress; and a further tax of three mills per dollar of the principal of each bond claimed to be due to the State of Pennsylvania ; which offer of payment was refused.

The plaintiff also gave in evidence charters incorporating the Northern Central Railroad Company by the State of Maryland, and of Pennsylvania, and rested.

Defendant then gave in evidence the articles of consolidation of four railroad companies, one of which had been incorporated by the State of Maryland, and the three others by the State of Pennsylvania, embracing a line of road extending

from Baltimore to Sunbury, Pennsylvania,

This consolidation was entered into by the respective companies in pursuance of the Acts of the Legislatures of the two States ; and by means of which the four companies were merged in one, called the Northern Central Railway Company, and was incorporated by the same name by the Legislature of each State. The stockholders of the old companies received from the new twice the number of shares held by them in the old and, upon the receipt of which, the old shares were canceled after this Company was thus organized and the directors elected ; and, on the 20th December, 1855, it executed a mortgage to a Board of Trustees upon the entire line of its road from Baltimore to

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Sunbury, including all its property and estate situate -within both the States, which mortgage was given to secure the payment of \$2,500,000 in bonds, to be issued in amounts therein specified. The bonds were issued by the Company accordingly. A portion of them is in the hands of the plaintiff, the coupons attached to which are the subject of this suit.

Upon this state of the case, it is insisted on the part of the defense that the Northern Central Railway Company is entitled to have a deduction from the coupons of three mills per dollar, of the principal of each bond as a tax imposed on the same by the State of Pennsylvania. This is denied by the plaintiff.

It has been argued for the plaintiff, that the Acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied, as the courts of the State have expounded these laws, that they authorize the deduction, and if no other objection existed against the tax, the defense would fail. If this was an open question we should have concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. These Acts, as expounded, tax "money owing by solvent debtors whether by promissory note, penal or single bill, bond or judgment," and imposed three mills on the dollar of the principal, payable out of the interest, and it is made the duty of the president or other officer of the Company, who pays the coupons or interest to the holder, to retain the amount of the tax. Nor shall we inquire into the competency of the Legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say, that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such nonresident. It is not a tax of the money loaned, because that belongs to the resident debtor, for which he is taxable ; it is a tax on the security, the bond, which is in the hands of the non-resident holder.

The ground upon which we place the objection in this case to the tax is, in brief, that the bonds, amounting to \$2,500,000, of which those in question are a part, were issued by this Com-Foster Income Tax. - ^85.

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pany upon the credit of the line of road, its franchises and fixtures, extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. The old Company, to which this line belonged, by the Act of Consolidation, transferred it, with its fixtures and all other interests connected therewith, including their stock, to the new organization which have issued these bonds. The security, therefore, pledged and bound for the payment of them and of the interest embraces this Maryland portion of the road; and in case of a failure to pay the principal or interest, this portion with its franchises and fixtures would be liable to sale in satisfaction of the bonds and interest.

Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interest beyond her jurisdiction. This portion avails her tax roll as effectually as if it was situate within her own limits. The Maryland portion is not liable for the payment of any specified part or quantity of these bonds thus taxed, but is liable, with all its interests for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue, in the usual way, by this IST. C. Railway Co., and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds and, therefore, none can be made, in the taxation, with reference to the line within the respective jurisdiction of the States. If the tax is permitted as it respects one bond, it must be as it respects all.

Again ; if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interest outside of its limits would be larger.

The consequence of this tax of three mills on the dollar, if permitted, would be double taxation of the bondholder. Each State could tax the entire issue of bonds, amounting, as we have seen to \$2,500,000.

The effect of this taxation upon the bondholder is readily

seen. A tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest. A tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum ; and if this consolidation of the line of road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.

Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the Acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction.

The next question is, whether or not the coupons were subject to a tax of five per centum per annum to the United States on the 1st of July, 1865, when they became due.

The first income tax was imposed by the Act of Congress, passed August 5th, 1861. (12 Stat, at L. 309). The 49th sec. of that Act directed to be levied and collected upon the annual income of every person residing in the United States, from whatever source derived, a tax of three per centum on the amount of the excess of such income over \$800 ; and, upon the income, rents or dividend accruing upon property, etc., owned in the United States by any citizen residing abroad, at tax of five per centum.

The next Act was passed July 1, 1862 (lb. p. 473), and sec. 90 directed to be levied and collected a tax of three per centum on the annual income of every person residing in the United States, over \$600 and under \$10,000, and exceeding \$10,000, a tax of five per centum ; and upon the income of citizens residing abroad a tax of five per centum. The next section provides that the portion of income derived, among other things, from interest on bonds, or other evidences of indebtedness of any railroad company or other corporation which shall have been assessed and paid by said companies, shall be deducted from that prescribed in the previous section; and section 81 directs that this tax on the bonds and evidences of indebtedness shall be paid by the companies which may deduct the same to the payment of interest to the bondholders.

The next is the Act of June 30, 1864 (13 U. S. St., 281, sec:

116), and directs the levy and collection of a tax of five per centum upon the excess of income, and every person residing in the United States, or of any citizen residing abroad, over \$600 and under \$5,000 ; seven and a half per centum over \$5,000 and not exceeding \$10,000, and a tax of ten per centum over \$10,000. The next section provides for the same deduction from the income arising out of bonds and other evidences of indebtedness of railroad companies, as in the Act of July 1, 1862, and also for the payment of the same by the companies.

This Act was in force when the coupons in question fell due, and is the one by which the tax of five per centum claimed on the bonds of the plaintiff must be determined. The court below held that the Act did not include a nonresident alien, and directed a verdict and judgment for the whole amount of interest. The decision was placed mainly on the ground that, looking at the several provisions bearing upon the question, and giving to them a reasonable construction, it was believed not to be the intent of Congress to impose an income tax on non-resident aliens ; that they were not only not included in the description of persons upon whom the tax was imposed, but were impliedly excluded by confining it to residents of the United States and citizens residing abroad; and that the deduction from the prescribed income of the interest on these railroad bonds, when paid by the companies, was regarded as simply a mode of collecting this part of the income tax. We concur in this view. It is not important, however, to pursue the argument, as Congress has since, in express terms, by the Acts of March 10th and July 13th, 1866, imposed a tax on alien non-resident bondholders. The question hereafter will be, not whether the laws embrace the alien non-resident holder, but whether it is competent for Congress to impose it ; upon which we express no opinion.

The judgment of the court below is affirmed.

Mr. Justice Clifford dissenting:

I dissent from the opinion and judgment of the court in this case, because I think the taxes in question, both state and federal, were legally assessed, and that the officers of the railway company properly deducted the same from the amount of the coupons described in the declaration.

Also dissenting, Mr. Justice Swatne.

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UNITED STATES V. WHITEEDGE.

UNITED STATES SUPREME COURT.

UNITED STATES, Petitioner, v. EKEDERICK W. WHIT-
RIDGE, as Receiver of the Third Avenue Railroad Com-
pany et al. (No. 466.)

UNITED STATES, Petitioner, v. ADRIAN H. JOLINE
and Douglas Robinson, as Receivers of the Metropolitan
Street Railway Company et al. (No. 467.)

[231 U. S. 144, 58 L. ed. -]

Internal revenue - Federal corporation tax - effect of receivership.

The income derived from the management of street railway lines by
receivers authorized and required by the order for their appointment to
manage and operate such railways, and to discharge their public duties
subject to the supervision of the court, is not subject to the excise tax
imposed by the act of August 5, 1909 (36 Stat, at L. chap. 6, pp. 11,
112-117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946), § 38, upon the
doing or carrying on of business in a corporate capacity.

[Nos. 466 and 467.]

Argued October 21, 1913. Decided November 10, 1913.

Two writs of Certiorari to the United States Circuit Court of
Appeals for the Second Circuit to review decrees which affirmed
decrees of the District Court for the Southern District of New
York in favor of the receivers of street railway companies in
suits to require them to make returns of the net income for the
.purpose of the Eederal corporation tax law. Affirmed.

See same case helow, 117 C. C. A. 556, 198 Eed. 774.

The facts are stated in the opinion.

Mr. Assistant Attorney General Graham for the United
States.

Messrs. Joseph H. Choate, Jr., and Matthew C. Fleming for
respondent in No. 466.

Messrs. Arthur H. Masten and Ellis W. Leavenworth for re-
spondent in No. 46'Z.

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Mr. Justice Pitney delivered the opinion of the court :

These cases were heard together in the district court and in

the circuit court of appeals (sub nom. Pennsylvania Steel Co. V. JSTew York City K. Co. 193 Fed. 286, 117 C. C. A. 556, 198 Fed. 774r). They were argued together in this court, and may be disposed of in a single opinion.

In the years 1909 and 1910 certain lines of street railway in the city of New York, that may be conveniently designated as the Third Avenue system, were in the hands of the respondent Whitridge, as receiver, under orders made in the year 1908 by the circuit court of the United States for the southern district of New York in actions pending therein against the several proprietary companies. One of these actions was a foreclosure suit; the others were creditors' actions based upon the insolvency of the respective companies. The powers conferred upon the receiver did not vary in any respect now material, and so a recital of the substance of one of the orders will suffice as an example. This order constituted Whitridge receiver of all the railroads and other property of the company, including tracks, cars, and other rolling stock and equipment, easements, privileges, and franchises, and the tolls, earnings, income, rents, issues, and profits thereof, with authority "to run, manage, and operate the said railroads and properties, to collect the rents, income, tolls, issues, and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this court." By the same order the officers, agents, and employees of the company were required to turn over and deliver to the receiver all of the said property in their hands or under their control, and the company was enjoined from interfering in any way with his possession or management.

In the same years (1909 and 1910) certain other lines of street railway in the city of New York, which may be described as the Metropolitan system, were in the possession of the respondents Joline and Robinson as receivers, appointed in the year 1907 by the circuit court of the United States for the same district, in several actions therein pending against the corporations which were owners of these lines. The orders appointing these receivers contain provisions substantially similar to those

UNITED STATES V. WHITEIDGE.

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already recited. See *Ee Metropolitan R. Receivership (Re Reisenberg)* 208 U. S. 90, 93-96, 52 L. ed. 403-405, 28 Sup. Ct. Rep. 219.

In the year 1911, petitions were filed in the circuit court in behalf of the United States, praying for orders directing the re-

ceivers to make returns of the net income of the respective railway corporations for the years 1909 and 1910, to the collector of internal revenue, in the manner required by the provisions of the corporation tax law (act of August 5, 1909, § 38, 36 Stat at L. chap. 6, pp. 11, 112-117, U. S. Comp. Stat. Supp. 1911, pp. 741, 946).

The applications were resisted by the receivers on the ground that the respective corporations did not, during the years 1909 and 1910, carry on any business in respect of the property that was in their hands as such receivers ; that they as such receivers managed, controlled, and operated the same, and carried on all the business in respect thereto, and received all the income arising therefrom, not acting in place of the directors and officers of the respective companies, but as officers of the court; and that they were therefore not subject to the provisions of the act.

Jurisdiction of the controversy having been transferred to the district court by virtue of the new Judicial Code, § 290 [36 Stat, at L. 1167, chap. 231, U. S. Comp. Stat. Supp. 1911, p. 243], that court sustained the contention of the receivers (193 Fed. 286) and the circuit court of appeals affirmed this decision (117 C. C. A. 556, 198 Fed. 774). The cases are brought here by writs of certiorari.

As had been repeatedly pointed out by this court, the corporation tax law of 1909 - enacted, as it was, after Congress had proposed to the legislatures of the several states the adoption of the 16th Amendment to the Constitution, but before the ratification of that Amendment - imposed an excise tax, and not in any sense a tax upon property or upon income merely as income. It was enacted in view of the decision of this court in *Pollock v. Farmers' Loan & T. Co.* 157 U. S. 429, 39 L. ed. 759, 15 Sup. Ct. Rep. 673, 158 U. S. 601, 39 L. ed. 1108, 15 Sup. Ct. Rep. 912, which held the income tax provisions of the previous law (act of August 27, 1894, 28 Stat, at L. chap. 349, pp. 509, 553, §§ 27 etc., U. S. Comp. Stat. 1901, p. 2260) to be unconstitutional because amounting in effect to a direct tax upon property within

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the meaning of the Constitution, and because not apportioned in the manner required by that instrument.

As was said in *Flint v. Stone Tracy Co.* 220 U. S. 107, 145, 55 L. ed. 389, 411, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B, 1312, ante, 739, respecting the act of August 5, 1909 : "The tax is imposed not upon the franchises of the corporation irrespective of their use in business, nor upon the property of the corporation, but upon the doing of corporate or insurance business, and, with respect to the carrying on thereof, in a sum equivalent to 1 per centum upon the entire net income over and above \$5,000 received from all sources during the year; that is, when imposed in this manner it is a tax upon the doing of business with the advantages which inhere in the peculi-

arities of corporate or joint-stock organizations of the character described. As the latter organizations share many benefits of corporate organization, it may be described generally as a tax upon the doing of business in a corporate capacity." This interpretation was adhered to and made the basis of decision in *Zonne v. Minneapolis Syndicate*, 220 U. S. 187, 55 L. ed. 428, 31 Sup. Ct. Eep. 361 and *McCoach v. Minehill & S. H. K. Co.* 228 U. S. 295, 300, 57 L. ed. 842, 33 Sup. Ct. Eep. 419, ante, 825.

A reference to the language of the act is sufficient to show

t Sec. 38. That every corporation . . . organized for profit and having a capital stock represented by shares . . . organized under the laws of the United States or of any state . . . and engaged in business in any state . . . shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation . . . equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations . . . subject to the tax hereby imposed . . .

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation . . . received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties . . .

And on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations . . . subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation . . . has its principal place of business.

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that it does not in terms impose a tax upon corporate property or franchises as such, nor upon the income arising from the conduct of business unless it be carried on by the corporation. Nor does it in terms impose any duty upon the receivers of corporations or of corporate property, with respect to paying taxes upon the income arising from their management of the corporate assets, or with respect to making any return of such income.

And we are unable to perceive that such receivers are within the spirit and purpose of the act, any more than they are within its letter. True, they may hold, for the time, all the franchises and property of the corporation, excepting its primary franchise of corporate existence. In the present cases, the receivers were authorized and required to manage and operate the railroads, and to discharge the public obligations of the corporations in this behalf. But they did this as officers of the court, and subject to the orders of the court; not as officers of the re-

spective corporations, nor with the advantages that inhere in corporate organization as such. The possession and control of the receivers constituted, on the contrary, an ouster of corporate management and control, with the accompanying advantages and privileges.

Without amplifying the discussion, we content ourselves with saying that, having regard to the genesis of the legislation, the constitutional limitation in view of which it was evidently framed, the language employed by the lawmaker, and the reason and spirit of the enactment, all considerations alike lead to the conclusion that the act of 1909 did not impose a tax upon the income derived from the management of corporate property by receivers, under such conditions as are here presented.

Decrees affirmed.

1354 FOEMS OF PROTEST.

PART VIII.

FORMS OF PROTEST.

A (Individual- Form 1040)

PROTEST.

To the Secretary of the Treasury, the Commissioner of Internal Revenue,
and the OoUector of Internal Revenue for the District
of

Dated , 1914.

Sirs :

The undersigned, who, under protest and duress, has (have) executed and verified the annexed "Return of Annual Net Income of Individuals," upon Official Form 1040, as prescribed by the United States Treasury Department, protests (protest) against being required to make said return, and against its form, and against the assessment of any tax based thereon, or otherwise, against the undersigned under, or allegedly under, the provisions of Section II of the Act of Congi-ess approved October 3rd, 1913, on the ground that the rights of the undersigned under the Constitution and/or laws of the United States are thereby violated, and specifically, but not exclusively, on the following grounds of protest:

(1) That insofar as said Act and/or the decisions of the Treasury Department require a deduction "at the source" from income and thus deprive the owner of such income of the use and benefit of the moneys so

deducted, prior to the assessment of said tax against him, the same are in conflict with the V Amendment to such Constitution.

(2) That the decisions of the Treasury Department and/or the annexed form of return and/or said Act, insofar as they contemplate a tax upon anything other than what is included in the word "incomes," as used in the XVI Amendment to the Constitution of the United States, are contrary to law and to such Constitution, because, insofar as said tax is a direct tax, it is laid without apportionment among the States, and, insofar as it is an excise tax, it is arbitrary, unequal, not uniform throughout the United States, not within the taxing or other powers of Congress, and is in conflict with the V Amendment to such Constitution.

(3) That the decisions of the Treasury Department and/or the annexed form of return and/or said Act are contrary to law and said Constitution insofar as they require the inclusion, for the purpose of said tax, of income,

(a) - received prior to October 3, 1913, such income having become principal assets prior to the passage of said Act, and Congress being therefore powerless to tax the same without apportionment among the States;

(6) - accrued, in whole or in part, prior to the ratification of the XVI Amendment to such Constitution by the Legislatures of three-fourths of the several States and/or the certification thereof by the Secretary of State of the United States.

(4) That the decisions of the Treasury Department and/or the annexed form of return are contrary to law and said Act insofar as they

FOEMS OF PEOTEST. 1355

(a) - fail to allow an exemption for the tax year 1913 of \$2500 or \$3333.33, as the case may be, with reference to the "additional" tax;

(6) - fail to allow, with reference to the "additional" tax, the deduction from gross income of "income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax; "

(e) - require the inclusion in item 7 on page 2 of said return of income received from fiduciaries, derived "from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax" or from "the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions;"

{d) - require the inclusion in said return of income derived from "interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; "

(e) - require, with reference to the "normal" tax, a return of income "derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax;"

{/} - require a return of income as "net income" without first allowing for the deduction of "income derived from dividends on the stock or from the net earnings of corporations, joint stock companies, associations, or insurance companies subject to like tax" and consequently call for a return by individuals not having a net income of \$3,000 for the taxable year;

ig) - depart from the method of computation prescribed by said Act as follows: "That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for; "

(h) - require the inclusion among "income on which tax has not been deducted and withheld at the source," of income, the payment of the tax upon which has been assumed by debtors from whom such income is derived, such income being paid in full by the debtors to the individual without exemption being claimed;

(i) - require an individual having a net income of less than \$3,000 for the tax year, March 1st to December 31, 1913, to make a return;

ij) - restrict the exemption for the tax year 1913 of a husband and wife, living together and having separate incomes, to a total joint exemption of \$3333.33 on their aggregate income;

(fc) - require a joint or separate return from a husband and wife, living together and having separate incomes, when neither one has a separate income in excess of \$3,000 for the tax year;

(I) - require a husband or a wife, having a separate net income of less than \$3,000 for the tax year, March 1st to December 31, 1913, to make any return, or to include therein a return of the separate income of his wife or her husband, as the case may be;

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("*) - require a husband or a wife, having a separate income in excess^ of \$3,000, to include in his or her return a return of the separate income- of his wife or her husband, as the case may be, or require the one not having a separate income in excess of \$3,000 to make a return of his, or her separate income;

(«) - require or permit the assessment of an "additional" tax, based upon the aggregate income of a husband and wife, living together and having, separate incomes, when neither one has a separate income in excess of \$20,000.

Respectfully Submitted,

Name

Name

Address

[Comment: The form of protest appearing above is one prepared by a committee of representatives of New York banks, and trust companies.]

(For Corporations.)

PROTEST.

To the Secretary of the Treasury, the Commissioner of Internal Revenue,-
and the Collector of Internal Revenue for the District.

of

Dated, , 1914.

Sirs :

The undersigned, having, under protest and duress, executed and caused to be verified the annexed "Return of Annual Net Income" upon Official

Form No. , as prescribed by the United States Treasury Department,

protests against being required to make said return, and against its form,, and against the assessment of any tax based thereon, or otherwise, against the undersigned under, or allegedly under, the provisions of Section II. and/or Paragraph S of Section IV. of the act of Congress api)roved Oct. 3, 1913, on the ground that the rights of the undersigned under the Constitution and/or laws of the United States are thereby violated, and specifically, but not exclusively, on the following grounds of protest:

(1) - That said provisions of said act are in many respects arbitrary, unequal, confiscating, inquisitorial, oppressive, and unjust, and their validity cannot be supported upon any legal interpretation of the XVI. amendment to such Constitution.

(2) - That in so far as said act and/or the decisions of the Treasury Department require or compel the undersigned to deduct and withhold moneys "at the source" from the income of another person, or to keep books and records, incur expenses, file returns, expend labor or perform services, in order that the Federal Government may be aided in assessing and/or col-

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lecting the alleged income tax of another person, the same are in conflict
■with the V. amendment to such Constitution.

(3) - That the decisions of the Treasury Department and/or the annexed form of return and/or said act, in so far as they contemplate a tax (except strictly an excise tax with respect to the carrying on or doing of business, equivalent to 1% upon net income received during the period from Jan. 1 to Feb. 28, 1913) upon anything other than what is included in the word "income," as used in the XVI. amendment to such Constitution are contrary to law and to such Constitution, because, in so far as said tax is a direct tax, it is laid without apportionment among the States, and, in so far as it is an excise tax, it is arbitrary, unequal, not uniform throughout the United States, not within the taxing or other powers of Congress, and is in conflict with the V. amendment of such Constitution.

(4) - That the decisions of the Treasury Department and/or the annexed form of return and/or said act are contrary to law and such Constitution in so far as they require the inclusion, for the purpose of tax under said Section II. of said act, of income.

(a) - received or accrued prior to October 3, 1913, such income having become principal assets prior to the passage of said act, and Congress being therefore powerless to tax the same without apportionment among the States;

(6) - accrued, in whole or in part, prior to the ratification of the XVI. amendment to such Constitution by the Legislatures of three-fourths of the several States and/or the certification thereof by the Secretary of the United States.

{ 5) - That the decisions of the Treasury Department and/or the annexed form of return and/or said act are contrary to law and such Constitution in so far as, for the purpose of tax under said Paragraph S of Section IV. of said act, they

{a) - require a return from corporations, joint stock companies or associations, and insurance companies, not carrying on or doing business;

(6) - require a return from organizations or associations not carrying on or doing business by virtue of any charter, license or franchise;

(c) - require the inclusion of income derived or accrued between January 1, 1913, and February 28, 1913, from dividends on the stock or from the net earnings of other corporation, joint stock compaiiies, associations, or insurance companies subject to like tax.

(6) - That the decisions of the Treasury Department and/or the annexed form of return and/or said act contrary to law and such Constitution in so far as they

(a) - require the inclusion in said return of income derived from "interest received upon the obligations of a State or political subdivision thereof and upon the obligations of the United States or its possessions."

(6) - discriminate between "individuals" on the one hand and "corporations, joint stock companies or associations, and insurance companies" on the other hand in the matter of the exemption allowed to "individuals" under Paragraph C of said Section II. of said act;

(c) - discriminate between "individuals" on the one hand and "corpora-

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tions, joint-stock companies or associations, and insurance companies" on the other hand, in that the latter, but not the former, are required to make return of and pay tax upon the amount received by them "as individuals, upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income,"

((J) - prescribe that net income shall be ascertained by taking, for the period January 1 to February 28, 1913, one-sixth, and for the period March 1 to December 31, 1913, five-sixths of the entire net income for the calendar year 1913.

The protest is printed on a sheet of the same size as the forms for the use of corporations, for convenience in filing.

[Comment: The form of protest appearing above is one prepared by a committee of representatives of New York banks and trust companies.]

PART IX.

TREASURY REGULATIONS AND RULINGS.

Regulations concerning the tax imposed by section 2, act of October 3, 1913, on net income of individuals, corporations, joint-stock companies, associations, and insurance companies.

Treasury Department,
Office of Commissioner of Internal Revenue,

Washington, D. C, January 5, 1914.

PART 1.

Individual Income Returns and Collections.

Persons taxable.

Article 1. Section 2 of the above-named act imposes a tax of 1 per centum (designated as the normal tax) on net incomes arising or accruing from all sources during the preceding calendar year to -

(ffl) Every citizen of the United States, whether residing at home or abroad; and

(b) Every person residing in the United States, though not a citizen thereof; and

(c) From all property owned and from every business, trade, or profession carried on in the United States, by a person residing elsewhere.

Additional or Buper tax.

Art. 2. Said section also imposes an additional tax on all net incomes of individuals exceeding \$20,000, as follows:

1 per cent on incomes exceeding \$20,000 and not exceeding \$50,000.

2 per cent on incomes exceeding \$50,000 and not exceeding \$75,000.

3 per cent on incomes exceeding \$75,000 and not exceeding \$100,000.

4 per cent on incomes exceeding \$100,000 and not exceeding \$250,000.

5 per cent on incomes exceeding \$250,000 and not exceeding \$500,000.

6 per cent on incomes exceeding \$500,000.

Net income defined.

Art. 3. The net income shall consist of the total gains, profits, and income derived from all sources (designated as gross income) less deductions numbered first to sixth, inclusive, specifically enumerated in paragraph B of the act. (See article 6.)

Normal tax; upon what computed.

In computing the taxable income for the purposes of the normal tax there shall be deducted from the net income as above ascertained :

(a) The amount included in the gross income received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income,

(h) The amount of income the tax upon which has been paid or withheld for payment at the source ; and

(c) The specific exemption of \$3,000 or \$4,000, as the case may be, except in the case of nonresident aliens.

Gross income. What it includes.

Art. 4. Gross income includes all gains, profits, and in-

come derived from -

(a) Salaries, wages, or compensation for personal service of whatever kind and in whatever form paid.

(h) Professions, vocations, business (including income from copartnerships)> trade, commerce, or sales or dealings in prop-

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erty, growing out of the ownership or use of or interest in, real or personal property.

(c) Interest, rent, dividends, securities, or transaction of any lawful business carried on for gain or profit. (See art. 67 as to interest on deposits and certificates of deposit.)

(d) Gains or profits and income derived from any bource whatever, including the income from, but not the value of, property acquired by gift, bequest, devise or descent.

The foregoing is held to include all income, gains, and profits arising or accruing from all sources whatever in the calendar year for which the return is made, except as herein-after specifically stated.

Income exempt from taxation.

Art. 5. The following items should not be included as gross income :

(a) Value of property acquired by gift, bequest, devise, or descent during the year.

(b) Proceeds of life insurance policies paid upon the death of the person insured to beneficiaries, or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, but this shall not be construed to mean that interest payments to beneficiaries from insurance companies shall not be included as income.

(c) Income derived from interest upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions ;

(d) The compensation of the President of the United States in office at the time of the passage of the act of October 3, 1913, during the term for which he was elected, and the judges of the Supreme and inferior courts of the United States in office at the time of the passage of the act of October 3, 1913;

(e) The compensation of all ofBcers and employees of a State or any political subdivision thereof, including public-school teachers, etc. When such State officers or employees are

compensated by the United States, they must include such income as taxable.

Art. 6. Deductions and exemptions allowed in computing taxable income for the purposes of the normal tax.

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Seductions allowed under paragraph B.

Under paragraph B the following items are to be deducted from the geoss income :

1. The amount of necessary expenses actually paid for carrying on business, but not including business expenses of partnerships and not including personal, living, or family expenses.
2. All interest paid within the year on personal indebtedness of the taxpayer incurred in the conduct of business.
3. All ISTational, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits).
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise.
5. Debts due to the taxpayer which have been actually ascertained to be worthless and charged off within the year.
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made, nor for any amount paid for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.

"GroBS value at the mine" defined.

The term "gross value at the mine," as used in paragraphs B and G of

section 2 of the act of October 3, 1913, prescribing a limit to the amount

which may be deducted in the return of individuals and corporations as

depreciation in the case of mines, is held to mean the bona fide market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some other place than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, or of the metal produced, less transportation, reduction, and smelting charges.

7. The amount included in gross income received as dividends upon the stock, or upon the net earnings, of any corporation, joint-stock company, association, or insurance company

which is taxable upon its net income.
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8. The amount of income, the normal tax upon which has been paid or withheld for payment at the source of income.

Gifts or donations made during the year not to be deducted.

None of the above items of deduction shall include money or other items of value disposed of by gift, donation, or endowment.

Exemptions allowed under paragraph C.

Under paragraph C the personal exemption of \$3,000 or \$4,000, as the case may be, is to be deducted from the net income except in the cases of nonresident aliens. (See arts. 7, 9, and 10.)

Tax computed on the calendar year except for 1913.

Art. 7. The act provides that the said normal tax shall be computed on the remainder of said net income accruing during each preceding calendar year, and that for the year ended December 31, 1913, said tax shall be computed on the net income accruing from March 1 to December 31, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions authorized. A specific exemption, therefore, of \$2,500 or \$3,333.33, as the case may be, will be allowed for the year 1913.

Income of nonresident aliens subject to the normal tax.

Art. 8. The income of nonresident aliens subject to the normal tax of 1 per cent shall consist of the total gains, profits, and income derived from all property owned, and from every business, trade, or profession carried on and capital invested within the United States (to be designated as gross income), less deductions (1 to 8, inclusive) specifically enumerated in paragraph B of the act (see Art. 6), in so far as said deductions relate to said gains, profits, etc.

Exemptic under paragraph C not allowed in computing taxable incomes of nonresident

aliens.

The specific exemption in paragraph C of the act can not be allowed as a deduction in computing the normal tax of nonresident aliens.

Ifonresident aliens subject to additional or surtax.

Nonresident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States.

The responsible heads, agents, or representatives of said nonresident aliens who are in charge of the property owned or busi-

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ness carried on or capital invested shall make full and complete return of said income and shall pay the tax as provided herein.

Specific exemption allowed to single person or married persons living: apart.

Art. 9. Under paragraph C, every single person and every married person not living with husband or wife in the sense below defined, who has a net income exceeding \$3,000 per annum, is liable to pay the normal tax under this law, but in making return for such tax such person may claim an exemption of \$3,000 from his or her total net income.

Specific exemption allowed with respect to aggregate income of husband and wife.

Art. 10. Husband and wife living together are entitled to an exemption of \$4,000 only from the aggregate net income of both, which may be deducted in making the return of such income for taxation. However, when the husband and wife are separated and living permanently apart from each other each shall be entitled to an exemption of \$3,000.

If husband and wife have separate estates one return may be made showing income

of each,

If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each, and the full name and address of both, must be shown in such return. ;

The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income. ,

Wife's return of separate estate to be attached to husband's return or husband's income may be included in wife's return.

If a wife has a separate estate managed by herself as her own separate property and receives an income of \$3,000 or over, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than \$4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of \$4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed \$4,000.

Return required if either husband or wife has an income of \$3,000 or over.

If either husband or wife separately has an income equal to or in excess of \$3,000, a return of annual net income is re-

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quired under the law, and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than \$4,000.

Return required if aggregate income of husband and wife is in excess of \$4,000, although neither may have an income of \$3,000 or over.

If the aggregate net income of both exceeds \$4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately may have an income of \$3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

when status is to be determined.

The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year.

Interest in partnership profit; how reported.

Art. 11. His or her prorata share of the net profits derived from a partnership business, whether or not divided and paid out shall be included in the personal return of each partner.

Partnerships as such, not liable to tax, but statement may be required.

Art. 12. Partnerships, as such, are not subject to the income tax, and are only required to make return when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business ; and when a return is required it shall give a complete and correct statement of the gross income of the said partnership and also a complete statement of the actual expenses of conducting the business of said partnership, and the net profits and the name and address of each member of said partnership, and their respective interest in the net profit thus reported.

Partnership profits to be included in returns made by individual partners.

Art. 13. The net annual profits of a partnership when divided and paid to the members thereof shall be included by each individual partner receiving same in his annual return of net income, and the tax shall be paid thereon as required by law. When the annual profits of a partnership are not distributed and paid to the members thereof the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their

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annual return as a part of their gross income, the same as if said profits had been distributed and paid to them.

Individual partnership profits.

Art. 14. Undivided annual net profits of partnerships thus returned by the individual members thereof, and tax paid thereon, shall not, when said profits are actually distributed and paid to such members, be again included in their annual return as a part of their gross income.

Partnerships, as such, may file certificate claiming deduction.

Partnerships owning interest coupons or registered interest orders may claim deduction for legitimate expenses incurred in business by filing the proper certificate with the withholding agent. (See article 47.)

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when returns of annual net income of \$3,000 or over are to be made.

Art. 15. Each person of lawful age whose net income

is \$3,000 or over shall, on or before the 1st day of March, 1914, and on or before the 1st day of March each year thereafter, file an accurate return of income under oath or affirmation, except as herein provided. (See article 8.)

Where Sled.

If the person making the return of income has his place of business in the collection district in which he resides, the return shall be filed with the collector of that district. If his principal place of business is elsewhere, the return shall be filed in the district in which that business is located.

In the case of an individual residing in a foreign country return shall be made to the collector of internal revenue for the district where his principal business is carried on within the United States.

Form of return.

Art. 16. The required return will be made on Form 1040 in accordance with the instructions printed thereon, and will specifically set forth -

1. All income received from each specific source and the total thereof.

3. All the separate items of deduction claimed under paragraph B of this law.

3. The amount of specific exemption claimed under paragraph C.

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4. All amounts of income upon which tax has been withheld at source by withholding agent or agents.

When return will be made Ijy guardian or duly authorized agent.

Art. 17. When by reason of minority, insanity, absence, sickness, or other disability, the individual is unable to make his own return, the same shall be made by his guardian or duly authorized agent.

Executor or administrator to make return in case of death.

In the case of the death of a person whose net income for the part of the year during which he lived was \$3,000 or over, return of net income shall be made by the executor or administrator of the estate of the deceased, and in computing the taxable income of such estate there shall be allowed the specific exemption provided by law.

, Notice of failure to file return to be served on guardian or agent.

Art. 18. When the required return has not been made by a person acting as guardian, agent of a nonresident alien, or by one acting in any other capacity in which the law makes it a duty for him to represent the individual, notice of failure to make such return will be served upon such guardian or agent.

, Evidence may be filed showing nonliability to make return.

The person upon whom such notice is served may, however, when the facts warrant, file evidence with the collector showing that the individual for whom he acts did not receive an income subject to tax during the year, or that the said guardian or agent had filed the return with some other collector.

Returns not required of persons for whom full returns have been made by others.

Art. 19. Any individual whose net income is less than \$20,000, for whom full return has been made by others as withholding agents, shall not be required to make a return.

Returns to be prepared by collector in certain cases.

Art. 20. If any person liable to pay an income tax for himself or others shall fail to make and deliver the return required by law, but shall consent to disclose the particulars of any business or occupation liable to pay such tax, it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read and consented to, signed, and verified by oath or affirmation by the person liable to make such return, the same may be received as the list or return of such person.

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Refusal or neglect to make return.

Art. 21. In case any person liable to make return shall neglect or refuse to make or render a list or return, or shall render a willfully false or fraudulent return, it shall be the duty of the collector, after due notice has been given, to make such list, according to the best information he can obtain by the examination of such person, or any other evidence.*

Penalty for failure to make return or for making false return.

When duly certified by the collector, the said list thus prepared shall be the return of said person and the tax so ascertained to be due, together with the 50 per cent or 100 per cent penalty incurred, shall be assessed and collected.

Returns to lie rerifled by oath or af&rmation.

Art. 22. The annual return must be verified by oath or affirmation of the person making the same. Collectors are directed by law to require every return to be so verified by the person rendering it. The afiidavit may be made before the collector for the district or before any officer authorized by law to administer oaths.

Extension of time to file return may be granted.

Art. 23. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return may be granted by the collector, provided a written application therefor is made by the individual within the period for which such extension is desired.

Returns to be forwarded to Commissioner of Internal Revenue by registered mail.

Art. 24. The annual returns will be forwarded by collectors by registered mail to the Commissioner of Internal Revenue with the list for the month in which the returns are filed. Collectors must provide that said returns and all forms relating thereto are securely sealed in envelopes or packages before forwarding the same.

Assessments; notification of; when to be paid.

Art. 25. All assessments shall be made by the Commissioner of Internal Revenue, and all persons shall be notified of the amount for which they are respectively liable on or before the 1st day of June of each successive year, and said assessments shall be paid on or before the 30th day of June, except in cases

1 For method of procedure in such cases, see sects. 3173 and 3176, Rev. Stat., and also Form 1045, the form of notice to be given in such cases.

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of refusal or neglect to make such return and in eases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained, as provided by the law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment.

Penalty for failure to pay tax.

To any sum or sums due and unpaid after the 30th day of June in any year, and for 10 days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

Penalties for failure to make returns.

Art. 26. If any person, corporation, joint-stock company, association, or insurance company liable to make returns or pay tax shall refuse or neglect to make returns at the time or times specified in each year, such person shall be liable to a penalty of not less than \$20 nor more than \$1,000.

Penalties for making false or fraudulent returns.

Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by law to be made shall be guilty of a misdemeanor, and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Art. 27. Nothing in the law or these regulations shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after the act of October 3, 1913, took effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

Art. 28. For regulations relative to the claiming of exemptions and deductions on income, the tax on which is to be deducted and withheld at the source, see article 33.

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PART 2.

Collections at the Source.

Collections at source applies only to the normal tax imposed upon individuals. Collection at source not operative until Nov. 1, 1913.

Art. 29. The deductions and payment of the tax at the source of income applies only to the normal tax imposed upon individuals and shall not be construed to require any of such tax to be withheld prior to the 1st day of November, 1913.

Persons, firms, etc., required to withhold tax at the source.

Art. 30. Paragraph E of section 2 of the act provides

that -

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax.

Withholding agents.

Art. 31. All persons, firms, etc., mentioned in the above-quoted paragraph are referred to in these regulations as "debtors" or "Withholding agents," and the word "source" is to apply to the place where the income originated and is payable.

Income as to which tax is to be withheld.

Art. 32. The income from which the normal tax of 1 per cent is to be withheld by withholding agents includes all items of income exceeding in the aggregate \$3,000 and payable to any one person during the year, except :

(a) Dividends on capital stock or from the net earnings of corporations and joint-stock companies or associations and insurance companies subject to like tax.

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(&) Income of an individual which is not fixed or certain and not payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but shall be listed in the annual return of the individual, and the tax shall be paid thereon by him.

Incomes derived from the following professions and vocations come under this head: Agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons whose income is irregular and indefinite.

Such persons shall make personal return of all their income,

provided their total net income from all sources is \$3,000 or
Special fees and annual retainers.

over. For example: When a lawyer receives a retainer of \$5,000 as a special fee, a deduction therefrom shall not be made by the payer; but when a lawyer receives a retainer of \$5,000 per annum, and the exemption claim is \$3,000, \$2,000 of such income would be taxed and the tax retained at the source; or if his exemption claimed should be \$4,000, \$1,000 of such income would be taxed and the tax thereon withheld at the source.

(c) Items listed in article 5, which are wholly exempt from tax.

Exemptions under paragraph C. Certificate to be filed with -withholding agent.

Art. 33. (a) In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C (see arts. 9 and 10) except by an application to the collector for refund of the tax unless he shall, not less than 30 days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a certificate claiming the benefit of such exemption, and thereupon no tax shall

Penalty for making: false representations to obtain exemption,

be withheld upon the amount of such exemption. If any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of \$300.

Deductions under paragraph B.

(&) Nor shall any person under the foregoing conditions

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"be allowed the benefit of any deduction provided for in subsection B (see art. 6, 1 to 6) unless he shall, not less than 30 days prior to the day on which the return of his income is

Form 1008 to be filed with withholdine: agent or collector.

•due, either file with the person who is required to withhold and pay tax for him a true and correct return (on Form 1008) of his annual gains, profits, and income from all other sources, -and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax and the debtor or withholding agent will only withhold the tax on the payments made in excess of the deductions claimed on said form. Or such person may likewise make application for deductions to the collector of the district in which return is made or to be made for him.

Certificate filed on behalf of minors or insane persons.

If such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath on certificate (Form 1009) under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.

claims for refund.

(c) When, however, claims for exemption and deductions as above described are not filed within the prescribed time, the tax collected in excess can be remitted only on presentation <jf a claim for refund under the provisions of section 3220, Revised Statutes, said claims to be made either by the withholding agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.

Claims for abatement.

Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof, be filed under the provisions of said section 3220, Revised Statutes, either by the withholding agent against whom the assessment was made, or by the persons on account of whom such taxes were withheld.

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Taxes withheld not to be forwarded to collector until notices of assessment have been

received.

In the monthly list returns as now prescribed a space is provided to show the amount of taxes which the withholdings agent may remit to the collector when such returns are filed.

The withholding agents will not, however, forward to the collector amounts withheld by him until notices of assessment are received from the collector.

Claims for exemption and deductions may be filed with the withholding agent and claims for deductions may be filed with the collector, not later than 90 days prior to March 1.

Withholding agents to be furnished statement of deductions claimed through collector.

In cases where claims for deductions are filed with the collector within the time prescribed, the collector will immediately furnish the withholding agent (whose name and address must be shown on Form 1008) with a statement of the amount of deductions claimed, and said withholding agent shall not withhold and pay the normal tax to the extent of the deductions claimed as per said list.

Withholding agents should not file their annual return until after the expiration of the time allowed persons to file claims for exemptions and deductions and if claims for deductions are filed with the collector in the required time, yet not in sufficient time to have the adjustment made by the withholding agent, the collector will make the adjustment on the withholding agent's return and in reporting such withholding agent for assessment will make allowance for the amount of such deductions claimed, notice of such adjustment, however, must be furnished the withholding agent.

Tax withheld to be paid to collector of district.

Art. 34. The normal tax of 1 per cent shall be deducted and withheld at the source, and payment made to the collector of internal revenue as provided in the law, by the debtor, or his, her, or its duly appointed agent authorized to make such deduction and payment.

Tax withheld by one agent not to be again withheld by another agent.

No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of 1 per cent thereon, provided that any such person, firm, or organization other than the debtor who has withheld said tax, shall file with the collector of internal

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revenue for his, her, or its district, a certificate (Form 1006) showing from whom and in what amount the tax has been so withheld.

Returns to be made to collector of internal revenue.

Art. 35. Withholding agents who are required to make monthly returns will, on or before the 20th day of each month, file with the collector for their respective districts such returns for the preceding month, accompanied by all certificates relating thereto, and there shall also accompany said returns all certificates claiming exemptions and deductions which are not required to be listed thereon; and on or before the 1st day of March in each year said withholding agents shall likewise file their annual returns for the preceding calendar year. Annual returns (Forms 1041 and 1042) must be accompanied by all certificates claiming exemptions and deductions relating thereto.

Art. 36. For regulations as to assessment and collection of taxes from withholding agents, see article 25 and "Assessments and collections," Part 4.

A.

Income derived from interest upon bonds and mortgages or deeds of trust or other similar obligations of corporations, etc.

Tax on income derived from interest on bonds, etc., to be deducted.

Art. 37. Under the law a tax of 1 per cent, designated as the normal tax, shall be deducted at "the source," beginning November 1, 1913, from all income accruing and payable to any person subject to such tax which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to \$3,000.

Interest on State and Government obligations exempt.

Income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, is not subject to the income tax, and certificates of ownership

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in connection with coupons or registered interest orders for such interest will not be required.

Term "debtor" to apply to all corporations, etc., and to duly appointed withholding and

paying agents.

Art. 38. The term "debtor," as hereinafter used, shall apply to all corporations, joint-stock companies or associations, and insurance companies; and such "debtor" may appoint withholding and paying agents to act for it in matters per-

taining to the collection of this tax, upon filing with the collector of internal revenue for the district a proper notice of the appointment of such agent or agents. Where such withholding agent is so authorized by the debtor corporation, he may file with the collector of his district the required returns and accompanying certificates (arts. 50 and 51), in which case the assessment of the tax withheld by him will be made in that district. Unless such authority is given, such reports, etc., will be furnished by the debtor corporation to the collector of its district (i. e., the district in which its principal financial or business office is located), where, in such case, assessment will be made.

Tax to be deducted and withheld by debtor corporation,

Art. 39. For the purpose of collecting the tax on all coupons and registered interest originating or payable in the United States, the source shall be the debtor (or its withholding and paying agent in the United States), who shall deduct

Banks and individuals taking interest coupons for collection.

the tax when the same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon, where such coupons or orders for registered interest

Certificates of ownership to accompany interest coupons for collection.

are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured. These certificates shall be made on the prescribed forms and shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations of each debtor. (See Arts. 43 and 46.)

Substitute certificates, when permitted.

Art. 40. Responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached, may present the coupons with the attached certificates to the debtor or withholding agent for collec-

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tion, or such certificates may be detached and forwarded direct to the Commissioner of Internal Revenue, provided such bank, banker, or collecting agent shall substitute for such certificates

Record to be kept by collecting agenti

its own certificate, and shall keep a complete record of each transaction, showing -

1. Serial number of item received.
2. Date received.
3. Name and address of person from whom received.
4. Name of debtor corporation.
5. Class of bonds from which coupons were cut.
6. Pace amount of coupons.
7. Exemptions from tax claimed by owner under paragraph C.

Tor the purpose of identification, such substitute certificates should be numbered consecutively, and corresponding numbers given the original certificates of ownership.

Privilege of substituting certificates extended to foreign countries.

The permission here granted will extend to responsible banks, bankers, and collecting agents in foreign countries, through whom collection of such interest coupons is made.

The various substitute certificates hereby authorized will correspond with the form numbers of the ownership certificates detached by the collecting agent, except that the substitute certificates' form numbers will be followed by the letter "a."

Kormal tax to be deducted before payment of interest.

Art. 41. A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying s\ich interest iipon interest orders signed by the registered holders of said bonds unless there shall be filed with said debtor or its fiscal agent (not later than 30 days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed -

Claims for exemption from tax, by whom same may be filed.

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2, of the income tax law, or

By corporations, joint-stock companies, associations, or in-

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surance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G, subdivision (a), of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such.

Certificata of ownership to specify bonds and amount of interest due-
Art. 42. If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the name and address of the owners, and if registered in names other than the owners such names with addresses shall also be given. Such certificates shall also show whether the claimants do or do not then claim

Claim for exemption under paragraph C.

exemption from taxation at the source, under paragraph C, articles 9 and 10 (\$3,000, and under certain conditions \$4,000), as to the income represented by such coupons or interest. The certificates will be prepared on Form 1000 and must show the amount, if any, of exemption claimed, the total amount of exemption to which the claimant is entitled and must be signed by the claimants, who shall use their ordinary business signatures. The certificates shall also show the post-office and street address of the claimants, the internal-revenue district, and the date when signed.

Certificates may he signed by duly authorized agents, etc.

Art. 43. Duly authorized agents may sign such certificates for the persons for whom they act, and withholding agents, banks, or others, with whom such certificates are filed, if satisfied as to the identity and responsibility of the persons so signing, shall stamp or write on the face of each such certificate "Satisfied as to identity and responsibility of agent," giving

Certificates to he verified hy withholding agents.

name and address of person thus certifying. Certificates so verified may be accepted by all other persons, firms, or organizations to whom presented, without question as to authority of such agent. If the person, firm, or organization first receiving such certificate is not satisfied as to the agent's identity and

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responsibility, then, in that event, the agent shall furnish evidence of his authority to so act, which will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall be indorsed as above provided.

Tax to be deducted before payment of interest.

Art. 44. Whenever interest coupons, accompanied by a certificate of an individual who is a citizen or resident of the United States, are presented to a debtor or its withholding agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its withholding agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership (Form 1000).

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, and it shall be filed with the debtor at least five days before the due date of such interest.

Tax on interest payable to certain corporations, etc., not to be deducted.

Art. 45. If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision (a) of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

Certificates of corporations claiming exemption.

Such certificate will be made on Form 1001, and must be signed in the name of the organization (stating its place of business) by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, and must be properly dated.

Certificates of nonresident aliens.

Art. 46. Coupons, or orders for registered interest, payable in the United States, representing the interest on bonds owned by nonresident aliens, must be accompanied by the prescribed Foster Income Tax - 87.

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certificate (Eorm 1004), but this certificate may be signed either by the owner or, in behalf of the owner, by a reputable bank or bankers or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide nonresident and alien owners, and when such certificate is thus attached the normal tax of 1 per cent on such coupons or interest orders need not be withheld at the source by the debtor or collecting agency. Unless such proof of foreign ownership is furnished, the normal tax of 1 per cent should be deducted.

Foreign organizations engaged in business within the United States are subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of their income withheld by a debtor or withholding agent, and claim for such exemption will be made on Form 1018.

Certificates filed by partnership, showing interest of individual in partnership profits,

etc.

Art. 47. Inasmuch as individual members of a partnership are liable for income tax upon their respective interest in the net earnings of such partnership, the partnership may file with the withholding agent a notice signed in the name of the partnership, by a member thereof, claiming a deduction of a specific amount on account of the legitimate expense incurred in conducting the business of said partnership; and upon receipt of said notice said withholding agent shall not withhold, and shall not be held liable for, the normal tax on the amount of income equal to the amount of deduction claimed in said notice; but in no event shall the total of the amounts claimed, as provided herein, be in excess of the total amount of the actual legitimate annual expenses incurred by said partnership in the conduct of its business. Application for such deduction shall be made on Form 1011.

Foreign partnerships, certificate of ownership may be filed by.

Art. 48. Foreign partnerships or firms, all the members of which are both citizens, or subjects, and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks of corporations, joint-stock companies or associations and insurance com-

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panies, organized or doing business in the Unfted States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income

derived from property or investments in the United States, a certificate and notice of ownership (Form 1016) setting forth the above facts; and the debtor or withholding agent shall not withhold any part of said income.

Foreign partnership, composed of nonresident foreigners and citizens of United States.

Art. 49. Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners residing in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership who is a citizen of the United States, or who is a foreigner residing in the United States or its possessions, shall be given on the back of said certificate, and no part of said income shall be withheld. The said certificate and notice of ownership in either case above provided shall be on Form 1014.

Monthly list return.

Art. 50. Withholding agents are required to file in duplicate a monthly list return (Form 1012) giving a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld from interest payments made upon bonds or other similar obligations, and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld.

Forms 1012a, 1012b, and 1012c are to be used where Form 1012 does not afford sufficient space in which to enter all items.

Summary of monthly lists may be used.

Form 1012d, when necessary to be used, shall be made in duplicate and shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent, and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same as fully as if each list attached to the summary was signed and sworn to separately.

An annual list return (Form 1013) in duplicate is also required to be made by debtors or withholding agents of the

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normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations, and it shall, be filed on or before March 1 of each calendar year.

Monthly list to constitute a part of the annual list return.

Art. 51. The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required, in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds. Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent when the owners of the bonds are not subject to having

Certificates to be forwarded to collector.

the normal tax withheld at the source, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for the district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received.

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B.

Income derived from interest upon bonds, mortgages, etc., paid by first bank or collecting agency when certificates of owners are not filed.

Interest coupons or orderst not accompanied by certificate.

Art. 52. Where the coupons or interest orders are not accompanied by certificates as heretofore prescribed, the first bank, trust company, banking firm, or individual, or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax and shall attach to such coupons or interest orders its own certificate (Form 1002), giving the name and address of the owner of, or the person presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders ; also setting forth the fact that they are withholding the

tax upon them ; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver to the Collector of Internal Revenue the certificate of such bank, trust company, etc., which is withholding such tax money.

Identity of persons presenting interest coupons to be established.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity.

Monthly and annual list returns.

Art. 53. Withholding agents receiving coupons or interest orders not accompanied by certificates of owners are required to file monthly and annual list returns in duplicate.

The required monthly list return (Form 1044) shall give a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld and shall show the name and address in full of the owner of, or the person presenting such coupons or interest orders, if the owner is not known, amount of the income subject to tax and the amount of tax withheld.

An annual list return (Form 1044a) is also required to be made by such withholding agents, showing the amount of tax

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withheld during the preceding year on income of this character. This return must be filed on or before the 1st day of March of each calendar year.

The monthly list returns in the form as required herein shall constitute a part of the annual list return to be made, and the withholding agent will not be required, in making an annual list return of the tax thus withheld, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list returns for the year for which annual list return is made.

C.

Income derived from coupons, checks, or bills of exchange on foreign bonds, mortgages, dividends, etc.

Collection of coupons, checks, bills of exchange, etc.

Art. 54. All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks,

bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries, and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are re-

License to be obtained from Commissioner of Internal Revenue.

quired by law to obtain a license from the Commissioner of Internal Revenue.

Application for license to be made to collector of district.

Art. 55. Applications for such license (Form 1017) will be made to the collector for the district in which such business is to be carried on. Upon the acceptance of such application the collector will issue to the applicant without cost a license (Form 1010) which will continue in force until revoked or canceled. Blank forms of such license, bearing the fac simile signature of the Commissioner of Internal Revenue, will be furnished collectors on requisition, who will in all cases coun-

Penalty for failure to obtain license.

tersign the same before issuing it to applicant. Failure to obtain a license or to comply with regulations is punishable by a fine

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not exceeding \$5,000 or imprisonment not exceeding one year, or both, in the discretion of the court.

Art. 56. Where the collector is not sufficiently informed as to the entire responsibility of the applicant, or where in

Bond may be required in certain cases.

any case he deems it advisable, the Commissioner of Internal Revenue may upon the recommendation of the collector require of the applicant a bond, in duplicate, with satisfactory sureties, in a penal sum at least equal to the estimated amount of tax to be withheld by such applicant during any one year. A form of bond to be given in such cases will be furnished collectors on application for the same. Where licenses are issued without bond, the collector will each year inquire into and satisfy himself of the financial responsibility of the licensee.

Art. 57. When any person, firm, or corporation shall have branch offices and desire to collect foreign interest or dividend

License to be obtained for branch offices.

income through said branch offices, the application for license or licenses shall be made by the person, firm, or corporation through its principal office for its branch office or offices. Ap-

Application for license to be certified to collector of district in which branch offices

are located.

Application for licenses in such cases shall be made to the collector of internal revenue for the district in which the home office is located. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the foregoing regulations have been complied with to the satisfaction of the collector, he shall certify this fact to the collector of internal revenue for the district in which the branch office is located, and the collector to whom this certification is made shall issue to such branch office a license, as in the case provided in article 55.

Normal tax on interest collected to be withheld by agent.

Art. 58. The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise, shall withhold therefrom the normal tax of 1 per cent, and

statement as to tax withheld to be indorsed or appended to coupons, checks, etc,

will be held responsible therefor. Such licensee shall indorse or stamp on each such coupon, check, or bill of exchange, when practicable, the words "Income tax withheld by" (giving his name or their name, address, and date), which shall be sufficient

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evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., makes it impracticable to make said indorsement thereon, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

Licensee to furnish collector of district with list of taxes deducted, etc.

Art. 59. Such licensee shall obtain the names and addresses of the persons from whom such items are received and shall prepare a list of same in duplicate (on Form 1043) and file it with the collector of internal revenue for his district not later than the 20th day of the month next succeeding the month in which such items were paid. The list shall be dated, and shall contain the names and addresses of the taxable persons, the character and amount of income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld. In addition to the monthly lists the licensee will, on or before the 1st day

of March in each year, file with the collector in duplicate a return (Form 1043a), showing the amount of income paid and the amount of tax withheld by him during the preceding year and such other information as the form prescribes.

The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by the licensee as withholding agent, and he will not be required, in making an annual list return of the tax withheld from income described in article 54, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

Claims for exemption under paragraph C may be filed.

Art. 60. In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the exemptions allowable under paragraph C (arts. 9 and 10), such individual shall be permitted to avail himself of the exemption claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount

Organizations exempt from having tax withheld at the source, of the exemption so claimed ; or if such items are presented by

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corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

Certificates of exemption to be forwarded with monthly list returns to collector.

Art. 61. In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations herein set forth includes the interest upon all foreign bonds, even though the coupons may, at the option of the holder, be payable in the United States as well as in some foreign country.

Licensee to keep records,

Art. 62. All person? licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers.

D.

Income derived from wages, rent, interest, or other fixed and determinable gains, profits, and income.

Wages, salaries, rents, etc.

Art. 63. The above title includes all income derived from salaries, wages, rents, royalties, interest, taxable annuities, emoluments, or other fixed and determinable annual gains, profits, and income of another person. ("Income derived from interest upon bonds and montgages, or deeds of trust, or other similar obligations of corporations, etc.," and "Income derived from coupons, checks, or bills of exchange on foreign bonds, mortgages, dividends, etc.," which have been covered by regulations under such titles, are not to be included here.)

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Withholding agents to deduct and pay tax.

Art. 64. Copartnerships, companies, corporations, joint-stock companies or associations, insurance companies, in whatever capacity acting, including lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers and all officers and employees of the United States, hereinafter referred to as "debtors" or withholding agents, having the control, receipt, custody, disposal, or payment of income as described in article 63, shall deduct and withhold from such annual gains, profit, and income, when the same shall have reached an aggregate amount in excess of \$3,000, such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall pay the taxes so withheld to the collector of internal revenue for the district in which the said withholding agent resides or has his, her, or its principal place of business.

Tax to be withheld on periodical payments when they aggregate \$3,000.

Art. 65. A withholding agent who pays monthly, or periodically during the year, interest, rents, salaries, wages, etc., shall not withhold the said tax until such time as the interest, rents, salaries, wages, etc., shall have reached an aggregate amount in excess of \$3,000. When such amount has been reached, such agent shall withhold the tax on the whole \$3,000 and any excess thereof, unless the person to whom the

Exemption under paragraph C may be claimed.

income is due files a notice claiming exemption under paragraph C (as provided in art. 33 (a)), in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of \$3,000 or \$4,000 (as the case may be), and the tax so withheld shall be paid as required by law.

Seductions under paragraph B may be claimed.

Art. 66. In case the person to whom the income is due is entitled to any deductions under paragraph B, he may avail himself of such deductions by filing with the withholding agent Form 1008, as provided in article 33 (b), in which case the withholding agent will only withhold the tax on such income in excess of the deductions claimed on said form.

Tax not to be withheld by banks on interest paid on deposits.

Art. 67. Banks, bankers, trust companies, and other banking institutions receiving deposits of money, are not required

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to withhold at the source the normal income tax of 1 per cent on interest paid, or accrued, or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid or accrued and unpaid, must be included in the annual income return of the person entitled to receive such interest, whether on open account or on the certificate of deposit.

Tax to 1)6 withheld on payment of interest notes, or notes given for renti

Art. 68. When a note shall have been given in payment of interests, rents, or other income accruing after March 1, 1913, the maker of the note, as the "debtor" and as the "source" where the income originates, is required, in paying such note, to withhold the normal tax of 1 per cent on the entire amount of the note, if in excess of \$3,000, unless claim for exemption or deductions under article 33 (a) or 33 (b) is filed, in which case the said tax shall be withheld only on the amount of said note in excess of the exemption or deductions so claimed.

Purchasers of interest notes as to which tax has not been withheld^

If any person who has purchased or discounted any such notes omitted, in acquiring them from previous holder, to make a deduction or allowance for said tax, he can look for relief only to the person from whom the notes were obtained, as the

"debtor," the maker of said notes, is required to deduct, withhold, and pay to the collector of internal revenue the amount of the normal tax of 1 per cent which may be due thereon.

Annual list return by withholding agents.

Art. 69. Withholding agents shall make an annual list return (Form 1042), in duplicate, to the collector of internal revenue for the district in which the withholding agent resides or has his principal place of business on or before the 1st day of March in each year, showing the names and addresses of persons who have received incomes in excess of \$3,000, on which the normal tax of 1 per cent has been deducted and withheld during the preceding year. This return must be accompanied by all forms presented claiming exemptions and deductions.

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Fiduciaries.

Guardians, etc., as fiduciary agents, to deduct tax.

Art. 70. Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity hereinafter referred to as fiduciary agents, who hold in trust an estate of another person or persons, shall be designated the "source" for

Notice of deduction to be filed with other withholding agents.

the purpose of collecting the income tax, and by filing notice with other debtors or withholding agents said fiduciary shall be exempt from having any income, due to them as such, withheld for any income tax by any other debtor or withholding agent. Other debtors or withholding agents upon receipt of such notice shall not withhold any part of such income from said fiduciary and will not in such case be held liable for normal tax of 1 per cent due thereon. The form of notice to be filed with the debtor or withholding agent by fiduciary will be on Form 1015. Where such exemption is not claimed, notice thereof on Form 1019 should be filed with the withholding agent.

Annual return to be made to the collector of the district.

Art. 71. Fiduciaries shall, on or before March 1 of each year, make and render a return of the income coming into their custody or control and management from each trust or estate when the annual interest of any beneficiary in said trust or estate is in excess of \$3,000. This return (Form 1041) must be filed with the collector for the district in which the fiduciary resides or has his principal place of business, and shall contain an itemized statement of the gross income and deductions claimed.

Notice of failure to file return as required shall be served upon the fiduciary. (See art. 18.)

The entries on the first page of Form 1041 in column headed "Amount of income paid or accrued to beneficiaries" should not include their respective shares of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, etc., subject to like tax or the income on which the normal tax of 1 per cent has been deducted and withheld at the source by the debtor or the prior withholding agent,

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as these two items of income are treated as deductions in determining the amount of income subject to tax for which the fiduciary as withholding agent has to account.

When the share of any beneficiary, therefore, in the amount stated on line 3 of the first page of said return is in excess of \$3,000, return must be made.

Return to include only income accruing from trust, unless otherwise authorized by

beneficiary.

Art. 72. As each such fiduciary acts solely in behalf of the beneficiaries of the trust, the annual return required in such cases has reference only to the income accruing and payable through said fiduciary, and not to the income of the beneficiary derived from other sources. If, however, such fiduciary is legally authorized to act for such beneficiary as agent or attorney in fact, he may in such case also make for the beneficiary the personal annual return (Form 1040) required by law.

Annual return to include list of beneficiaries, showing tax withheld from each.

Art. 73. The annual return of the fiduciary shall contain a list of the name and full address of each beneficiary and the share of said income to which each may be entitled. There must also be entered opposite the name of each beneficiary the amount of exemption, if any, claimed by him, the amount of income on which the fiduciary is liable for tax, and the amount of tax withheld, and the said return shall be signed and sworn to by the fiduciary, if an individual, making same, and his full address must be stated. If the fiduciary is an organization, the return shall be signed and sworn to by the president, secretary, or treasurer of said organization.

Return to be made of undistributed income accruing during the year.

Art. 74. Fiduciaries having control of any portion of an annual income accruing during the year, but not distributed or paid to the beneficiaries during the year, shall, in rendering their

annual return (Form 1041), give the name and address of each of said beneficiaries having a distributive interest in said income, and shall furnish all information called for in such returns. The fiduciary shall in all such cases withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said beneficiaries when in excess of \$3,000, the same as if said income was actual-

Claim for exemption of undistributed income. Paragraph C.

ly distributed and paid. Exemption under paragraph 0, how-

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ever, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent.

Tax withheld on imdivided income not to be again withheld when income is distributed, .

Art. 75. When the normal tax on undivided annual net income has been so withheld, such tax shall not be again withheld when such portion of the income is actually distributed and paid to said beneficiary.

PART 3.

Relating to the Income Tax imposed by sections 2 and 4 of the act of October 3, 1913, on corporations, joint-stock companies or associations, and insurance companies.

Organizations subject to tax.

Art. 76. Under the provisions of sections 2 and 4 of the act of October 3, 1913, every corporation, joint-stock company or association, and every insurance company organized in the United States, no matter how created or organized, except those specifically exempted, shall be subject to pay annually an income

One P9r cent on entire net income.

tax of 1 per centum per annum upon the entire net income arising or accruing from all sources during the preceding calendar or fiscal year, as the case may be. Certain exceptions as to taxability will be noted specifically hereinafter.

Foreign corporations subject to the tax.

Art. 77. A similar tax shall be levied, assessed against, and paid annually by corporations, joint-stock companies or associations, and insurance companies organized, authorized, or existing under the laws of any foreign country upon the amount of net income accruing from business transacted and capital invested within the United States during such year.

Corporations defined.

Art. 78. "Corporation" or "corporations," as used in these regulations, shall be construed to include all corporations, joint-stock companies or associations, and all insurance companies coming within the terms of the law, and such organizations will hereinafter be referred to as "corporations."

Associations, real estate trusts, etc, subject to tax.

Art. 79. It is immaterial how such corporations are created or organized. The terms "joint-stock companies" or "associations" shall include associates, real estate trusts, or by whatever

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name known, which carry on or do business in an organized capacity, whether organized under and pursuant to State laws, trust agreements, declarations of trusts, or otherwise, the net income of which, if any, is distributed, or distributable, among the members or share owners on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share of capital which each has invested in the business or property of the organization, all of which joint-stock companies or associations shall, in their organized capacity, be subject to the tax imposed by this act.

Corporations required to make returnSi

Art. 80. Every corporation not specifically enumerated as exempt shall make the return of annual net income required by law whether or not it may have any income liable to tax, or whether or not it shall be subordinate to or controlled by an-

Mutual telephone and mutual insurance companies not exempt.

other corporation. Mutual telephone companies, mutual insurance companies, and like organizations, although local in character, and whose income consists largely from assessments, dues, and fees paid by members, do not come within the class of corporations specifically enumerated as exempt. Their status under the law is not dependent upon whether they are or are not organized for profit. Not coming within the statutory exemption, all organizations of this character will be required to make returns of annual net income, and pay any income tax thereby shown to be due. For this purpose the surplus of receipts of the year over expenses will constitute the net income upon which the tax will be assessed.

A railroad or other corporation which has leased its properties in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee directly to the stock and bond holders^ should, nevertheless, make a return of annual net income showing the rental so paid as hav-

ing been received by the corporation.

Interest deduction by corporations operating leased or purchased lines.

Art. 81. A railroad company operating leased or purchased lines shall include all receipts derived therefrom, and, if bonded indebtedness of such lines has been assumed, such operating company may deduct the interest paid thereon to an amount not exceeding one-half of the sum of its interest-bearing indebt-

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edness and its paid-up capital stock outstanding at the close of the year.

Xessee corporations not to include capital stock or indebtedness of lessor corporations.

Art. 82. Corporations operating leased lines should not include the capital stock of the lessor corporations in their own statement of capital stock outstanding at the close of the year. The indebtedness of such lessor corporations should not be included in the statement of the indebtedness of the lessee unless the lessee has assumed the same. Each leased or subsidiary company will make its own separate return, accounting for therein all income which it may have received by way of dividends, rentals, interest, or from any other source.

Torei^ corporations havins branch offices in United States to desig^iate principal ofl^e.

Art. 83. A foreign corporation having several branch ofEces in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return.

Corporations organized during year to make returns.

Art. 84. A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) during which it was engaged in business or had an income accruing to it.

Corporations going into liquidation.

Art. 85. Corporations going into liquidation during any tax period may, at the time of such liquidation, prepare a "final return" covering the income received or accrued to them during the fractional part of the year during which they were engaged in business, and immediately file the same with the collector of the district in which the corporations have their principal places of business.

Limited partnerships.

Art. 86. Limited partnerships are held to be corporations within the meaning of this act and these regulations, and in their organized capacity are subject to the income tax as corporations.

Corporations exempt from tax.

Art. 87. The act specifically enumerates and exempts from its provisions and requirements labor, agricultural, or horticultural organizations, mutual savings banks not having a capital stock represented by shares, fraternal beneficiary societies, orders, or associations operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself oper-

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ating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, domestic building and loan associations, cemetery companies organized and operated exclusively for the mutual benefit of their members, any and all corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of whose net income inures to the benefit of any private stockholder or individual, business leagues, chambers of commerce, or boards of trade not organized for profit, no part of the net income of which inures to the benefit of the private stockholder or individual, and civic leagues or similar organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Domestic building and loan associations defined. Mutuality essential.

Domestic building and loan associations are among those enumerated as exempt from the requirements of the law. A domestic building and loan association is held to be one organized under and pursuant to the laws of the United States, or of a State or Territory thereof, or under the laws applicable to Alaska or the District of Columbia. Mutuality in operation and in the distribution of profits and benefits is essential to exemption. Therefore, in order to come within the exempted class such associations must not only be "Domestic," as defined, but they must be organized and operated exclusively for the mutual benefit of the members; that is, all the profits and benefits provided for in the articles of association and by-laws must be ratably distributed among all members regardless of the kind of stock held, according to the amount of money they have on deposit. An association issuing different classes of stock upon which different rates of interest or dividends are guaranteed or paid, does not come within the exempted class.

Corporations must establish their right to exemption.

Art. 88. All corporations and all beneficiary societies enumerated above shall by affidavit, or otherwise, at the request

of the collector or Commissioner of Internal Revenue, establish their right to the exemption provided, in which case it will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, or that none of Foster Income Tax. - 88.

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the net mcome inures to the benefit of any private stockholder or individual. In the absence of such a showing, such organizations may, at any time, be required to make returns of annual net income or disclose their books of account to a revenue officer for examination in order that the status of the company may be determined.

Society or association subject to exemption defined.

Art. 89. A society or association "operating under the lodge system" is considered to be one organized under a charter, with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals, and supported by fees, dues, or assessments.

Cemetery companies organized for mutual benefit of their members, exempt.

Art. 90. Cemetery companies organized and operated exclusively for the mutual benefit of their members are exempt. The provisions of the law clearly indicate that companies which operate cemeteries for profit are liable to the tax. The status of cemetery associations under the law will, therefore, depend upon the character and purpose of the organization and what disposition is made of the income.

Corporations whose status as to exemption is in doubt must make return.

Art. 91. Any corporation, concerning whose status under the law there is any doubt, or which does not clearly come within one or another of the classes of those specifically enumerated as exempt, should file a return (in blank if desired) and attach thereto a statement setting out fully the nature and purpose of the organization, the source of its income, and what disposition is made of it, and particularly of any surplus.

Co-operative dairies not issuing stock and allowing patrons dividends, exempt.

Art. 92. Co-operative dairies not issuing stock and allowing patrons dividends based on butter fat in milk furnished are not liable. In such case the "dividends" are the purchase price of the raw material furnished.

When income from public utilities is not taxable.

Art. 93. The income derived from any public utility or

from the exercise of any essential governmental function, which income accrues to any State, Territory, the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, and any income accruing to the government of the Philippine Islands, or to Porto Eico, shall not be subject to the tax imposed by this act. In cases wherein any

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State, Territory, or the District of Columbia, or any political subdivision of a State, or Territory, shall have, prior to the passage of this act, contracted in good faith with any person or corporation to acquire, construct, operate, or maintain a public utility, no income tax pursuant to this act shall be levied upon the income derived from the operation of such public utility, so far as the assessment and payment of such tax will impose a loss or burden upon such State, Territory, District of Columbia,

Persons or corporations not exempt.

or political subdivision. But the person or corporation is not relieved from the payment of the tax upon that portion of the income accruing to him, or it, under such contract.

Partnerships not taxable as corporatinns.

Art. 94. Ordinary copartnerships are not, as such, subject to the tax imposed by this act, but the individual members of any such partnership are liable for income tax only in their individual capacity on their respective shares of the earnings of such partnership, whether such earnings be distributed or not..

What constitutes paid-up capital stock.

Art. 95. Full amount of stock, as represented by the par-value of the shares issued, is to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, or payable in installments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation.

Gross income, how determined.

Art. 96. The following definitions and rules are given for determining the gross income of various classes of corporations :

Gross income of hanks and other financial institutions.

Gross income of banks and other financial institutions consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account, within the calendar or fiscal year for which the return is made.

Gross income of insurance companies.

Art. 97. Gross income of insurance companies consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account within the calendar or fiscal year for which the return is made, except as modified by the express exemptions of the articles which apply to mutual fire, mutual marine and life insurance companies.

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Gross income of mutual fire insurance companies.

Art. 98. Mutual fire insurance companies, which require their members to make premium deposits to provide for losses and expenses, shall not return as gross income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

Mutual marine insurance companies.

Art. 99. Mutual marine insurance companies may include in their deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, such amounts and interest having been included in gross income.

Art. 100. Life insurance companies are authorized to omit from gross income such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to the policyholder or treated as an abatement of his

Deferred dividends deductible, when.

premium. In so far as "deferred dividends" payable at a stated period represent "a portion of any actual premium received," such deferred dividends may be included in the amounts to be omitted from gross income for the year in which they were actually paid back, credited to the policyholder, or applied as an abatement of premium. In the case of dividends credited or apportioned annually to the policyholder, only the aggregate amount so actually credited or apportioned during the premium-paying period, and not any accretions thereto, can be excluded from gross income. In the case of whole-life or five-year distribution policies, deferred dividends may be excluded from gross income to the extent that they are paid back, or credited to the insured, or used as an abatement of his annual premiums.

Gross income of insurance companies, to include what.

Art. 101. Gross income of insurance companies, as defined

above, will include net premium income as reported to the State insurance departments, except the foregoing items specifically exempted in the act, and, in the case of life insurance companies, surrender values applied in any manner, consideration for supplementary contracts involving and not involving life contingencies, and all other income, gains, or profit as shown by the books of account.

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gencies, and all other income, gains, or profit as shown by the books of account.

Consideration for supplementary contracts.

Art. 102. Applied surrender values and consideration for supplementary contracts not involving life contingencies included in income will, of course, be deducted as payments under policy contracts, but for convenience in verifying the returns,, these items should appear in the return in both gross income and deductions.

Supplementary statement to accompany returns.

Art. 103. AH insurance companies should include and attach to their returns a supplementary statement showing, for life companies, the aggregate of items "of such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder within such year ;" in the case of mutual fire insurance companies a statement showing "any portion of the premium deposits returned to their policyholders;" and in the case of mutual marine companies "amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof," which are, or may be, omitted from gross income. (For authorized deductions, on account of losses, etc., see Arts. 113 and 147.)

Gross income of manufacturing companies.

Art. 104. Gross income of manufacturing companies shall consist of the total sales of manufactured goods during the year covered by the return, increased or decreased by the gain or loss as shown by the inventories of finished and unfinished products, raw material, etc., at the beginning and end of the year. To this amount should be added the income, gains, or profits from all other sources as shown by the books of account.

Gross income of mercantile corporations.

Art. 105. Gross income of mercantile companies shall include the total merchandise sales during the year, increased or decreased by the gain or loss as shown by the inventories of merchandise at the beginning and end of the year for which the return is made ; to this amount should be added the income^ gains, or profits derived from all other sources as shown by the books of account.

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Gross income of miscellaneous companies.

Art. 106. Gross income of miscellaneous corporations consists of the total revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources as shown by the books of account.

Definition of gross income.

Art. 107. It will be noted from these definitions that the gross income embraces not only the operating revenues, but also income, gains, or profits from all other sources, such as rentals, royalties, interest, and dividends from stock owned in other corporations, and appreciation in values of assets, if taken up on the books of account as gain ; also profits made from the sale of assets, investments, etc.

Income derived from sale of capital assets.

Art. 108. For the purpose of determining the income resulting from the sale of capital assets and the amount to be accounted for as income under this act, there shall be included any and all profit resulting from such sale and which may be apportioned to the period during which the corporation tax law (sec. 38, act of Aug. 5, 1909) was in force and effect, which was not returned as income during that period.

Ascertaining net income from the sale of capital assets.

' Art. 109. In ascertaining net income derived from the sale of capital assets, if such assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of profit or loss representing the difference between the selling and buying price is to be prorated to determine the proportion of the gain or loss arising subsequent to January 1, 1909, and the proportionate part belonging to the years subsequent to January 1, 1909, shall be added to or deducted from the gross income for the year in which the sale was made.

Profit or loss arising from the sale of such assets.

Art. 110. For the purpose of determining the profit or loss arising from the sale of such assets, there shall be added to the price actually realized from the sale any amount which has heretofore been set aside and deducted from gross income

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hj way of depreciation since January 1, 1909, which has not been paid out in making good such depreciation on the property sold.

Changes in book value of assets.

Art. 111. In the case of changes in book values of capital assets resulting from a reappraisal of property, the consequent gains or losses shall be computed for the return in the manner prescribed above in the case of the sale of capital assets.

Result of annual adjustment of values to be shown in return.

■In cases wherein there is an annual adjustment of book values ■of securities, real estate and like assets, and the increases and decreases in values, thus indicated, are taken up on the books and reflected in the profit and loss account, such readjusted values will be taken into account in making the return of annual net income and no prorating will be required. If such adjustment had been made annually prior to March 1, 1913, the book value of the assets at that date will be taken as the basis for •determining gain or loss resulting from subsequent sale, maturity, or adjustment. The adjustment referred to will comprehend assets which have increased in value as well as those which have decreased.

Where corporations are engaged in more than one class of business.

Art. 112. Where a corporation is engaged in carrying on more than one class of business, gross income derived from the ■different classes of business shall be ascertained according to the definitions above, and which are applicable thereto.

Net income, how ascertained.

Art. 113. The net income shall be ascertained by deducting from the gross amount of the income of such corporation received within the year from all sources :

Ordinary and necessary expenses.

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of

property.

Loss sustained -within the year.

Second. All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines, a reasonable allowance

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for depletion of ores and all natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds, and the sums other than dividends paid within the year on policy and annuity contracts, except as provided in the cases of mutual fire, mutual marine, and life insurance companies.

Interest accrued and paid within the year.

Third. The amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, on the amount of its indebtedness not exceeding the amount of capital employed in the busi-

Interest on indebtedness secured by collateral.

ness at the close of the year : Provided, That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing busi-

Tax paid on guaranteed bonds not deductible.

ness: Provided further. That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed ; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan, or trust company.

Taxes paid within the year.

Fourth. All sums paid within the year for taxes imposed under the authority of the United States, or any State or Terri-

tory thereof, or imposed by the government of any foreign country.

General expenses.

Art. 114. Expenses of operation and maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of the goods sold or inventoried at the end of the year, and all other expenses incurred in the operation of

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the business except such as are required by the act to be segregated in the return.

Cost of buildings on leased grounds.

Art. 115. The cost of erecting permanent buildings on ground leased by a company is a proper deduction as a rental charge, provided such buildings are left on the ground at the expiration of the lease as a part of the rental payment. In such case the cost will be prorated according to the number of years constituting the term of the lease and the annual deduction will be made accordingly.

Expense, foreign steamship companies.

Art. 116. General expenses, such as coal, ship stores, etc., of foreign steamship companies, shall be prorated as provided in the act for interest deductions in the case of foreign corporations.

Commissions to salesmen paid in stock.

Art. 117. Commissions allowed salesmen, paid in stock,, may be deducted as expense if so charged on books at the actual value of such stock.

Additions and betterments.

Art. 118. Amounts expended in additions and betterments; which constitute an increase in capital investment are not a proper deduction.

Compensation based on stockholding not deductible.

Art. 119. Amounts paid as compensation or additional compensation to officers or employees, which amounts are based upon the stockholdings of such officers or employees, are held to be dividends, and although paid in lieu of salaries or wages, are not allowable deductions from gross income, for the reason that dividends are not deductible.

Gifts, pensions, or gratuities not deductible.

Art. 120. Amounts paid for pensions to retired employees, or to their families, or others dependent upon them, or on account of injuries received by employees, are proper deductions as "ordinary and necessary expenses;" gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income.

Donations which are deductible.

Art. 121. Donations made for purposes connected with the operation of the property when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit

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of its employees, or their dependents, shall be a proper deduction for ordinary and necessary expenses.

Besei'ves for insurance.

Art. 122. Funds set aside by a corporation for insuring its own property are not a proper deduction, but any loss actually sustained and charged to such fund may be deducted.

Materials and supplies.

Art. 123. In ascertaining expenses proper to be included in the deductions to be made under the item of "Expenses," corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made.

Losses sustained during the year.

Art. 124. The deduction for losses must be losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of property or assets, including in the latter value such amount, if any, as has, in the current or previous years, been set aside and deducted from gross income by way of depreciation, as elsewhere defined, and has not been paid out in making good such depreciation.

Bad debts charged off.

Art. 125. Bad debts, if so charged off the company's books, during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

Reserves not deductible.

Art. 126. Reserves to take care of anticipated or probable losses are not a proper deduction from gross income.

Loss due to removal of buildings.

Art. 127. Loss due to voluntary removal of buildings, etc., incident to improvements is either a proper charge to the cost of new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation of the new building. Any loss claimed because of the voluntary removal of a building is presumed to have been covered by previous depreciation charges ; otherwise the amount of such loss will constitute a part of the cost of the new building.

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Losses from sale of capital assets.

Art. 128. All losses claimed arising from sale of capital assets should be arrived at in the manner prescribed in article 109, defining gains arising from sale of capital assets.

Depreciation defined.

Art. 129. The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should

Depreciation how determined.

be formed upon the assumed life of the property, its cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years.

Depreciation deductible, how treated.

Art. 130. The depreciation allowance, to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and should be so entered on the books as to constitute a liability against the assets of the company, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost.

Incidental repairs.

Art. 131. Incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses.

Depreciation of reserve.

Art. 132. Depreciation set up on the books and deducted from gross income can not be used for any purpose other than making good the loss sustained by reason of the wear and tear, exhaustion, or obsolescence of the property with respect to which it was claimed. If it develops that an amount has been reserved

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or deducted in excess of the loss by depreciation, the excess shall be restored to income and so accounted for.

Diversion of depreciation reserve.

Art. 133. If any portion of the depreciation set up is diverted to any purpose other than making good the loss sustained by reason of depreciation, the income account for the year in which such diversion takes place must be correspondingly increased.

Shrinkage in book values.

Art. 134. Depreciation in book values of capital assets shall be treated in the return in the manner prescribed in the case of loss from the sale of capital assets (art. 109), but amounts arbitrarily charged off will not be allowed as deductions except so far as they represent an actual shrinkage in values which may be determined to have taken place during the year for which the return is made.

Art. 135. Where a corporation holds bonds which were purchased at a rate above par and said corporation shall proportionately reduce the value of those bonds on its books each year so that the book value shall be the redemption value of the bonds when such bonds become due and payable, the return of annual net income of the corporation holding such bonds may

Amortization of bonds.

show the depreciation on account of amortization of such bonds. The requirement is, however, that the amount carried to the amortization account each year shall be equitably proportioned with respect to the difference between the purchase price and the maturing value and the number of years to elapse until the bonds become due and payable. With respect to bond issues where such bonds are disposed of for a price less than par and are redeemable at par, it is also held that because of the fact

Loss to be prorated.

that such bonds must be redeemed at their face value, the loss sustained by reason of their sale for less than their face value may be prorated by the issuing corporation in accordance with the life of the bond.

Good will.

Art. 136. "Good will" represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed.

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Art. 137. An allowance for depreciation of patents will be made on the following basis :

Depreciation on patents.

The deduction claimed for exhaustion of the capital assets as represented by patents to be made in the return of annual net income of a corporation for any given year shall be one-seventeenth of the actual cost of such patents reduced to a cash

How determined.

basis. Where the patent has been secured from the Government by a corporation itself, its cost would be represented by the various Government fees, cost of drawings, experimental models, attorneys' fees, etc. Where the patent has been purchased by the corporation for a cash consideration, the amount would represent the cost. Where the corporation has purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities, at the time of the purchase will represent the cost of the patent to the corporation.

Deduction in case of obsolescence of patents.

Art. 138. With respect to the depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the corporation. Where the value of a patent has disappeared through obsolescence or any other cause and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss and be deducted from gross income in the return of annual net income for the year during which the facts as to obsolescence or loss shall be established, such unreturned cash value to be fixed in accordance with the proportion that the number of years which the patent still has to run bears to the full patent period of 17 years.

Depreciation of timber land.

Art. 139. Corporations owning tracts of timber lands and removing therefrom and selling, or otherwise disposing of the timber will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income. The purpose of the depreciation or depletion deduction is to secure to the corporation, when the timber has been exhausted, an aggre-

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gate amount which, plus the salvage value of the land, will equal the capital actually invested in such timber and land.

Deductions to cease, when.

Art. 140. When an amount sufficient to return this capital has been secured through annual depreciation deductions no further deduction on this account shall be allowed. For the purpose of increasing the deduction on this account no arbitrary increase in values shall be made, unless such increase in value shall be returned as income for the years in which the increase in value was taken up on the books.

Depreciation of natural deposits.

Art. 141. The depreciation of coal, iron, oil, gas, and all other natural deposits must be based upon the actual cost of the properties containing such deposits. In no case shall the annual deduction on this account exceed 5 per cent of the gross value at the mine (well, etc.) of the output for the year for which the computation is made.

Definition of "gross value" at the mine.

Art. 142. The term "gross value at the mine," as used in paragraphs B and G of section 2 of the act of October 3, 1913, prescribing a limit to the amount which may be deducted in the return of individuals and corporations as depreciation in the case of mines, is held to mean the market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some place other than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, or of the metal produced, less transportation, reduction, and smelting charges.

Rate of deduction to be reduced, when.

If the rate of 5 per cent per annum shall return to the cor-

poration its capital investment prior to the exhaustion of the deposits, the rate on which the annual deduction for depletion of deposits is based must be lowered in accordance with the estimated number of years it will take to exhaust the estimated reserves.

Deduction to cease, when.

In case the reserves shall be in excess of the estimates, no further deduction on account of depletion shall be made where the capital investment has been returned to the corporation.

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Depreciation of plant, etc.

Art. 143. In addition to the deduction to measure the loss due to depletion, the corporation will be allowed the usual depreciation of its machinery, equipment, etc., such depreciation to be determined on the basis of the cost and estimated life of the property with respect to which the depreciation is claimed.

Corporations leasing: oil or gas.

Art. 144. Corporations leasing oil or gas territory shall base their depletion deduction upon the cost of the lease, and not upon the estimated value, in place, of the oil or gas.

Corporations operating mines.

Art. 145. Corporations operating mines (including oil or gas wells) upon a royalty basis only can not claim depreciation because of the exhaustion of the deposits.

Unearned increment.

Art. 146. Unearned increment will not be considered in fixing the value on which depreciation shall be based.

Deduction of losses, depreciation, payments on policy contracts by insurance companies.

Art. 147. (a) Under item 5 (a) of the return form, the insurance company may take credit for all losses actually sustained during the year and not compensated by insurance or otherwise, including losses resulting from the sale or maturity of securities or other assets, as well as decreases by adjustment of book values of securities, in so far as such decreases represent actual declines in values which have taken place during the year for which the return is made ; also losses from agency balances, or other accounts, charged off as worthless; losses by defalcation ; premium notes voided by lapse, when such notes shall have been included in gross income. This item will not, however, include payments on policy contracts.

Losses by shrinkage in value of property.

(&) In this item may be deducted actual losses sustained within the year by reason of the depreciation of property, which shall have been so entered on the books of the company as to constitute a liability against its assets. An arbitrary depreciation deduction claimed in the return, but not evidenced by book entry, can not be allowed.

Policy contracts paid.

(c) In this item credit will be taken for all death, disability, or other policy claims, including fire, accident, and liability losses, matured endowments, annuities, payments on installment policies, surrender values, and all claims actually paid under the

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-terms of policy contracts. Salvage need not be included in gross income if deducted in ascertaining the net amount paid for

Losses incurred and unpaid not deductilile.

losses under policy contracts. Eeserves covering liabilities for losses incurred, reported, resisted, adjusted or unadjusted but not paid, can not be deducted from gross income under this or any other item of the return.

Additions to reserves required by law, how determined!

(d) The reserve funds of insurance companies to be considered in computing the deductible net addition to reserve funds are held to include only the reinsurance reserve and the reserve for supplementary contracts required by law in the case of life insurance companies, the unearned premium reserves required by law in the case of fire, marine, accident, liability, and other insurance companies, and only such other reserves as are specifically required by the statutes of a State within which the company making the return is doing business. The reserves used in computing the net addition must not include the reserve on any policies the premiums on which have not been accounted for in gross income. For the purpose of this deduction, the net addition is the excess of the reserve at the end of the year over that at the beginning of the year and may be based upon the highest authorized reserve required by any State in which the company making the return does business.

Assessment company reserves.

In the case of assessment insurance companies, the actual deposits of sums with the State or Territorial officers pursuant to law, as additions to guaranty or reserve funds, shall be treated as payments required by law to reserve funds.

Mutual marine insurance companies will deduct under item

5 (e) amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof.

What constitutes allowable interest deduction.

Art. 148. The amount of interest accrued and paid within the year by a corporation on an amount of bonded or other indebtedness not in excess of one-half of the sum of the interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or, if no capital stock, on the amount of interest-bearing indebtedness not exceeding the amount of capital employed in the business at the close of the year, constitutes

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an allowable deduction; that is, the maximum principal, upon which interest for the purpose of this deduction, can be computed must not exceed, in the one case, one-half of the sum of the interest-bearing indebtedness and the capital stock outstanding at the close of the year, or, in the other case, must not exceed the amount of capital employed in the business at the close of the year. The interest to be deductible must have been computed on the proper principal at the contract rate and must have been actually paid within the year.

Interest paid as rental deductilile.

Interest paid pursuant to contract on an indebtedness secured by mortgage on real estate occupied and used by a corporation, in which real estate the corporation has no equity or to which it is not taking title is an allowable deduction from gross income as a rental charge, payment of which is required

Interest on mortgagre on real estate in which corporation has equity not deductible.

to be made as a condition to the continued use and possession of the property. If, however, the corporation has an equity in or is purchasing for its own use the real estate upon which such mortgage is a prior lien, the indebtedness will be held to be indebtedness of the corporation within the meaning of the law and the interest paid on such mortgage will be deductible only to the extent that it, with interest on other obligations of the corporation, is within the limit fixed by the act.

Banks and hankingr associations.

Art. 149. In the case of banks and banking associations, loan or trust companies, interest paid within the year on deposits, or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, may be allowably deducted from the gross income of such corporations.

Interest paid on indebtedness.

Art. 150. Interest paid on indebtedness, wholly secured by collateral the subject of sale in ordinary business of such corporations, is also deductible to the full amount of such interest paid. This contemplates that the entire interest received on the collateral securing such indebtedness shall be included in the gross income returned.

Different rates of interest.

Art. 151. Interest on bonded or other indebtedness bearing different rates of interest may be deducted from gross income Foster Income Tax. - 89.

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during the year, provided the aggregate amount of such indebtedness on which the interest is paid does not exceed the limit prescribed by law, and in case the indebtedness is in excess of the amount on which interest may be legally deducted the indebtedness bearing the highest rate may be first considered in computing the interest deduction and the balance, if any, will be computed upon the indebtedness bearing the next lower rate actually paid, and so on until interest on the maximum principal allowed has been computed.

Taxes deductible.

Art. 152, All sums paid within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country, are deductible from gross income.

Taxes not deductible.

Art. 153. Taxes paid for local benefits are not deductible. Taxes paid by a corporation pursuant to a contract guaranteeing that the interest payable on its bonds or other indebtedness shall be free from taxation are not deductible.

Tax on capital stock of banks.

Art. 154. Banks paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such banks can not deduct the amount of taxes so paid in making their return for the income tax imposed by this act unless specially authorized to do so by the laws of the State in which they do business. The shares of stock are the property of the stockholders, and such holders are primarily liable for the tax.

Import duties.

Art. 155. Import duties or taxes are not deductible under

the item of taxes paid during the year, but should be included in arriving at the cost of goods under item No. 4 (expenses).

Reserves for taxes.

Art. 156. Reserves for taxes can not be allowed, as the law specifically provides that only such sums as are paid within the year for taxes shall be deducted.

Foreign corporations subject to tax.

Art. 157. Foreign corporations shall be subject to the normal tax of 1 per cent computed upon the net income received by or accruing to such corporations from business transacted and capital invested in this country. For the purpose of the tax the net income of such foreign organizations shall be ascertained

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by deducting from the gross income arising, received, or accruing from business done and capital invested in this country the deductions enumerated in the act, which deductions shall be

Deductions confined to expenses of business done in the United States.

limited to expenditures or charges actually incurred in the maintenance and operation of the business transacted and capital invested in the United States, or, as to certain charges, such proportion of the aggregate charges as the gross income from business done and capital invested in the United States bears to the aggregate income within and without the United States. In other words, the deductions from the gross income of a foreign corporation doing business in this country should, as nearly as possible, represent the actual expenses and authorized charges incident to the business done and capital invested in this country and must not comprehend, either directly or indirectly, any expenditures or charges incurred in the transaction of business or the investment of capital without the United States. ,

How deductions shall be evidenced.

Art. 158. It is immaterial whether the deductions except for taxes and losses are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books of the corporation as to constitute a liability against the assets of the corporation making the return. Deductions for taxes, however, should be the aggregate of the amounts actually paid, as shown on the cash book of the corporation. Deductions for losses should be confined to losses actually sustained and charged oif during the year and not compensated by insurance or otherwise. Except as the same may be modified by the provisions of the act, limiting certain deductions and authorizing others, the net income as returned for the purpose of the tax should be the same as that shown by the books or the annual

balance sheet.

Tax on net income of corporations for the year 1913.

Art. 159. The tax imposed upon the income of corporations, whether domestic or foreign, shall be computed upon the net income, ascertained in the manner hereinbefore indicated, except that for the year ending December 31, 1913, the income tax will be imposed upon the net income accrued from March 1 to December 31, both dates inclusive, and such amount of net

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income is ascertained by taking five-sixths of the entire net income for said calendar year.

Special excise tax on corporations!

Art. 160. The special excise tax on corporations provided for in the act of August 5, 1909, is reaffirmed and made operative and effective as to the period from January 1 to February 28, 1913, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations for said year, and the net income shall be ascertained in accordance with the provisions of the income-tax law.

Return and assessment.

For the year 1913 it shall be necessary to make but one return and assessment for all taxes imposed in the income-tax law upon corporations, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in section 2 of the act of October 3, 1913.

Ifo specific exemption allowable as a deduction.

Under the present law, no specific exemption is allowable, as was the case under the corporation-tax law ; hence the assessment will be based upon the entire net income of the corporation arising or accruing to it from all sources during the entire year for which the return is made.

Inventories.

Art. 161. In order that certain classes of corporations may arrive at their correct income, it is necessary that an inventory, or its equivalent, of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year shall be made in order to determine the gross income or to determine the expense of operation.

physical inventory.

A physical inventory is at all times preferred, but where a physical inventory is impossible and an equivalent inventory is

equally accurate, the latter will be acceptable.

An equivalent inventory is an inventory of materials, supplies, and merchandise on hand taken from the books of the corporation.

Corporations, classes of.

Art. 162. For the purpose of this tax, corporations are divided into five classes, as follows :

class A.

Class A. Financial and commercial, including banks, banking associations, trust companies, guaranty and surety compa-

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nies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

Class B.

Class B. Public service, such as railroad, steamboat, ferry-boat, and stage-line companies; street-railway companies; pipeline, gas-light, and electric-light companies; express companies, telegraph and telephone companies.

Class C.

Class C. Industrial and manufacturing , such as mining, oil and gas producing companies, lumber and coke companies ; rolling mills ; foundry and machine shops ; sawmills ; fiour, woolen, cotton, and other mills ; manufacturers of cars, automobiles, elevators, agricultural implements, etc. ; manufacturers or refiners of sugar, molasses, sirups, or other products; ice and refrigerating companies; slaughterhouse, tannery, packing, or canning companies; printing and publishing companies, etc.

Class D.

Class D. Mercantile, including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

Class E.

Class E. Miscellaneous, such as architects, contractors, hotel, theater, or other companies or associations not otherwise classified.

Form of return.

Art. 163. Under the authority conferred by this act, forms of return have been prescribed, in which the various items speci-

fied in the law are to be stated. Blank forms of this return will be forwarded to collectors and should be furnished to every corporation, not expressly exempted, on or before January 1 of each year, in the case of corporations making their returns for the calendar year, or on or before the first day of the next fiscal year in the case of corporations making returns for their fiscal year. Failure on the part of any corporation, joint-stock company, association, or insurance company liable to this tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Corporations not supplied with the proper forms for making the return should make application therefor to the collector of internal revenue in whose district is located its principal place

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of business in ample time to have its return prepared, verified, and filed with the collector on or before the last due date as hereinafter defined. Failure in this respect subjects it not only to 50 per cent additional tax, but to the specific penalty imposed for delinquency. Each corporation should carefully prepare , its return so as to fully and clearly set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law.

Penalties imposed by act.

Art. 164. To any sum or sums due and unpaid after the date for payment stated in the notice and demand issued by the collector there shall be added the sum of 5 per cent of the amount so unpaid, and interest at the rate of 1 per cent per month. To the amount assessable on the basis of the net income there shall be added 50 per cent in case of refusal or neglect of a corporation to make a return or 100 per cent in case of a false or fraudulent return. For refusal or neglect to make a return within the prescribed time, or for a false or fraudulent return, the corporation so offending shall be liable to a specific penalty not exceeding \$10,000. Any person divulging unlawfully any information whatever disclosed by a return shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

Any person or any officer of any corporation required by law to make, render, sign, or verify any return, who makes any

Fraudulent returns.

false or fraudulent return or statement with intent to defeat or evade the assessment required by section 2, act of October 3, 1913, shall be guilty of a misdemeanor and shall be fined not exceeding \$2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Fiscal year; how established.

Art. 165. The Federal income-tax law authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established "fiscal year" or consecutive 12-months period, which may be other than the calendar year.

Pursuant to this provision the following instructions are issued for the guidance of collectors and other interested parties :

May designate day for closing of fiscal year and must give at least 30 days' notice to collector of the day so designated.

Any corporation, joint-stock company, or association, or any

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insurance company subject to the tax imposed by this act may, at its option, have the tax payable by it computed upon the basis of the net income arising or accruing from all sources during its fiscal year, provided that it shall designate the last day of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, not less than 30 days prior to the date upon which its annual return is to be filed give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.

Illustration of fiscal year.

Art. 166. In pursuance of this provision, a corporation or like organization subject to this tax may, for example, designate the 30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector not less than 30 days prior to the last day of such 60-day period. In the case just instanced the notice must be given not later than October 29.

If such designation (September 30, 1913) had been made and notice given, as hereinbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income arising or accruing to it during the period from January 1 to September 30, 1913, both dates inclusive.

Collectors must make a record of the designation of the "fiscal year."

Art. 167. Collectors of internal revenue receiving notices of the selection and designation of the "fiscal years," as above indicated, will make record of the same, recording (a) the name of the corporation or like organization, (b) the date when notice was given, (c) the day designated for the closing of the fiscal year, and (d) the date when the return under such designation must be filed, which must be, as above stated, not later than

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the last day of the 60-day period next following the day designated as the close of the fiscal year.

Unless notice was given within prescribed time, calendar year will govern.

Art. 168. If it shall appear that for the year 1913 the notice was given within the prescribed time - that is, within 30 days of the last day of the 60-day period - the 1913 return may be made as of the fiscal year so established; otherwise it will be made on the basis of the calendar year until such time as the designation shall be duly made and notice thereof properly given.

Designation and notice can not be retroactive.

Art. 169. The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30, 1914, as the date of the closing of its fiscal year and gives notice of such designation, it would not be authorized to make a return for the four months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the case of such corporation the return for the year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the four months ended April 30, 1914, and thereafter the return will be made on the basis of the fiscal year so established.

Where fiscal year is not properly established, returns must be made for calendar year.

Art. 170. In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year. Such returns in either case provided must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated.

Returns made on basis of fiscal year not so designated can not be accepted.

Art. 171. If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year.

Returns for 1913 must be made on new forms.

Art. 172. Returns made under this act and pursuant to

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these instructions must be made on the new forms prescribed by this department.

The forms heretofore in use, under the special excise tax law, can not be used for making returns for either the fiscal or calendar year 1913.

Extension not to exceed 30 days.

Art. 173. An extension of time within which a return may be filed can in no case exceed 30 days from the date on which the return is due and can be granted only upon written application to the collector, and in case of sickness or absence of an officer whose signature to the return is required, such application to be made prior to the expiration of the period for which the extension is desired.

Returns properly mailed in time to reach collector not subject to penalty under certain.

conditions.

Art. 174. If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the collector or deputy collector on or before the last due date, no penalty will be held to attach should the return not be actually received by such officer until subsequent to that date.

Last due date defined.

Art. 175. "Last due date," as hereinbefore used, is construed to mean the last day upon which a return is required to be filed in accordance with the provisions of the law, or the last day of the period not exceeding 30 days covered by an extension of time granted by the collector.

when due date falls on Sunday or legal holiday.

Art. 176. "When the due date as above defined falls on Sunday or on a legal holiday, the last due date will be held to be the day next following such Sunday or legal holiday and the return should be made to the collector not later than such follow-

ing day, or, if placed in the mails, it should be posted in ample-time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is thus made due in the office of the collector.

Assessment and payment of taxes.

Art. 177. All assessments against corporations, etc., making returns for the calendar year are required to be made and the several corporations, joint-stock companies, etc., notified of the

For calendar year.

amount for which they are liable on or before the 1st of June of each successive year, and said assessments shall be paid on,

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Notice of assessment.

or before the 30th day of June of such year. In the case of corporations making returns for the fiscal year, the assessments shall be made and notice given on or before the expiration of 90 days from the date when the returns were required to be filed, and the taxes assessed against such corporations, etc., shall be paid within 120 days after the date upon which the returns were required to be filed. In case of refusal or neglect by a corporation, etc., to make a return, and in case of false or fraudulent return, the commissioner, upon the discovery thereof within three years after such returns are due, shall make a return upon information obtained in the manner provided in the act; and the assessment made on the basis of such return shall be paid immediately upon notice and demand given by the collector.

Failure to pay tax when due.

Upon failure to pay the tax when due and for 10 days after notice and demand, a penalty of 5 per cent of the amount of the tax unpaid and interest at the rate of 1 per cent per month until paid shall be added to the amount of such tax.

Returns are public records, subject to inspection upon order of the President.

Art. 178. When the assessments shall have been made, the returns shall be filed in the office of the commissioner and shall constitute public records, subject to inspection upon the order of the President, under rules and regulations prescribed by the Secretary of the Treasury and approved by the President. Copies of returns on file in the Commissioner's office are not permitted to be sent to any person, except to the corporation itself or to its duly authorized attorney.

Information to States which impose income taxes.

Art. 179. Upon request of the governor of a State which imposes a general income tax, the proper officers of such State may have access to the returns filed by corporations doing business in such States, or to an abstract thereof showing the name and income of such corporations, etc., at such times and in such manner as the Secretary may prescribe. In no case are the original returns to be removed from the office of the commissioner, except upon order and by direction of the Secretary of the Treasury or the President.

Certified copies of returns.

Art. 180. At the request of the Attorney General, or by direction of the Secretary of the Treasury, certified copies of

TREASURY REGULATIONS. 1419

returns may be made and delivered to the United States district attorneys for their use as evidence in the prosecution or defense of suits in which the collection or legality of the tax assessed on the basis of such returns is involved, or in any suit to which the United States Government and the corporation, etc., making the return are parties and in which suit such certified copies would constitute material evidence.

Penalty for giving information in regard to returns.

Art. 181. The disclosure by any collector, deputy collector, agent, clerk, or other officer or employee of the United States to any person of any information whatever contained in or set forth by any return of annual net income made pursuant to this act is, by the act, made a misdemeanor, and is punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender is an officer or employee of the United States he shall be dismissed and be incapable thereafter of holding any office under the United States Government.

Bookkeeping.

Art. 182. A particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account.

Books of account best guide to income.

Art. 183. The books of a corporation are assumed to reflect the facts as to its earnings, income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the

books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation.

Omitted taxes may be assessed.

Art. 184. In cases wherein corporations have neglected or refused to make returns, and in cases wherein returns made are found, upon investigation or otherwise, to be false or fraudulent, the commissioner may, upon discovery thereof, at any time within three years after said return is due, make return upon the information obtained in the manner provided in the act, and

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the tax so discovered to be due, together with the additional tax prescribed, shall be assessed, and the amount thereof shall be paid immediately upon notice and demand.

Corporations subject to normal tax.

Art. 185. Corporations coming within the terms of this law are subject to the normal tax only ; that is, a tax computed at a level rate of 1 per cent of their entire net income regardless of the amount of such net income.

Examination of books.

Art. 186. For the purpose of verifying any return, made pursuant to this act, the Commissioner of Internal Revenue may, by any duly authorized revenue agent or deputy collector, cause the books of such corporation to be examined, and if such examination discloses that the corporation is liable to tax in addition to that previously assessed, or assessable, the same shall be assessed and shall be payable immediately upon notice and demand. For the purpose of such examination, the books of corporations shall be open to the examining officer, or shall be produced for this purpose upon summons issued by any properly authorized officer.

PART 4.

Assessment and Collection.

Taxes due to be reported on assessment lists.

Art. 187. All income taxes found to be due will be reported by collectors on their assessment lists. Form 23-A in the case of corporations, and on Form 23-B in the case of individuals and withholding agents.

Names to be listed in alphabetical order.

Art. 188. The names of corporations subject to tax will be listed on Form 23-A, according to their designated class,

and in alphabetical order as to each class. Names of individuals subject to tax will be listed on Form 23-B, alphabetically, with-

Names of withholding agents, how to be listed.

out reference to class or rate of tax. Following such names there will be listed, alphabetically, the names of all withholding or licensed collecting agents, and the aggregate amount of tax withheld by each, as shown by the annual returns rendered by them. An assessment against each person, firm or company,

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from whose income the tax has been so withheld, will be unnecessary in such cases.

Assessment against withholding agents to be deferred until annual reports are received.

Art. 189. To avoid, as far as possible, the assessment of taxes as to which claims for exemption or deduction may be filed under article 33, collectors will delay reporting for assessment taxes remaining in the hands of withholding agents, until the annual reports of such agents, which must be filed not later than March 1 in each year, are received.

Returns, when to be made.

Art. 190. Returns of withholding agents (including those of licensed collecting agents) as to interest payments shall be made monthly and returns containing summaries of said monthly returns shall be made annually. (See Part 2, A. B., and C.) Returns of individuals (see Part 1), corporations (see Part 3), and withholding agents, withholding tax on wages, salaries, rents, etc. (see Part 2, D), and fiduciaries acting as withholding agents (see Part 2, E) shall be made annually. All monthly returns are required to be made on or before the 20th day of each month for the preceding month. All annual returns are required to be made on or before the 1st day of March in each year, except in the case of corporations which have given due notice of the termination of their fiscal year, in which cases the prescribed return is to be filed within 60 days after the termination of such fiscal year.

Corporations may include in returns for year 1913 income subject to special excise tax.

Art. 191. Corporations which are subject to the special excise tax on income received during the months of January and February, 1913, may, under the provisions of section 4, paragraph 5, of the act of October 3, 1913, include such income, as also the income taxable under said act, in one return for the year 1913. In each such case one assessment only will be made.

Returns of income to be forwarded with assessment lists.

Art. 192. All returns of income, whether of individuals or corporations, should be forwarded with the assessment list rendered. Where in any case the collector has reason to believe

False or fraudulent returns.

that any return rendered is false or fraudulent, he will prepare and retain in his office a copy of such return, and will note on the original and under the head of "Remarks" of his assess-

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ment list the words "Investigation pending." He will in all such cases make his investigation in the manner prescribed in section 3173, Revised Statutes, and paragraph D of said act of October 3, 1913; and he will report the results of his investigation to the Commissioner of Internal Revenue, referring to the list, folio, and line on which the assessment was reported.

Certain returns of withholding agents to lie in duplicate.

Art. 193. Monthly and annual returns of withholding agents (including those of licensed agents) as to interest payments and the annual returns of withholding agents withholding tax on wages, salaries, etc., will be made in duplicate, one copy of which will be retained by the collector in his office and one copy transmitted to the Commissioner of Internal Revenue. Annual returns of withholding agents (including those of licensed agents) as to interest payments, and returns of withholding agents as to wages, salaries, etc., and of fiduciaries will be forwarded by the collector with his list. Form 23-B, on which the tax withheld is reported for assessment.

Certificates and returns to be forwarded as soon as received.

Art. 194. All certificates of exemption or deductions, filed by or on behalf of persons subject to tax, will be forwarded by the collector as soon as received; and all such certificates, reports, and returns, before being transmitted to the commissioner, will have stamped thereon the name and number of the district; will be arranged (unfolded) in alphabetical order and, in the case of corporations, according to the designated class to which they belong. Care should be taken to have all such papers, when so arranged, carefully secured by cord or other fastening, so as to insure their receipt in like order. This is especially necessary in view of the large number of like papers which will be forwarded from the various districts.

Reports and returns to be at once examined by collectors.

Art. 195. In order that assessment lists may be promptly prepared and forwarded, collectors will see that all reports and returns to be listed are examined as received, and that no delay

occurs in this branch of the work. Special diligence in this matter is necessary, as sufficient time must be given for the re-examination of such returns in the commissioner's office before

Assessment lists to be prepared and forwarded without delay.

assessment is made. The forwarding of assessment lists, however, should in no case be delayed, beyond the time allowed, on

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account of unexamined returns, as such returns can be examined and reported on a subsequent list. As the law limits the time in which these assessments are to be made and notice of assessment given, collectors will assign to this work all available force in their respective offices.

Notice to be sent to delinquents.

Art. 196. Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045, should in each case be sent to the delinquent. (For authorized extension of time, see articles 23 and 173.)

Notice of assessment.

Art. 197. When assessment has been made, collectors will, on receipt of their returned lists, at once issue preliminary notices of assessment (Form 647), and where in any case the tax assessed is not paid on or before the 30th day of June, or in case of corporations designating their own fiscal year, within 120 days following the date on which the return should have

Demand for tax, penalty, and interest

been filed, notice and demand (Form 17) should be at once issued, and unless the tax in such case is paid within 10 days after the service of such notice, general demand for tax, penalty, and interest (Form 21) should at once be issued. Immediate notice and demand (Form 17) will, however, be served in case of failure to file the required return within the statutory period.

Notice of assessment to be sent immediately on return of list.

Art. 198. Pending assessment on returns forwarded to the commissioner, collectors will have prepared the necessary notices of assessment, with properly addressed envelopes, to be used immediately on return of their assessment lists.

payments, abatements, and outstanding balances.

Art. 199. Statements of payment, abatement, and outstanding balances of such assessed taxes will be rendered monthly by collectors on special Form 325. Such statements will be

prepared in the same manner as required in the case of assessments on the regular Form 23, except that in Statement III the outstanding balances on the various lists will be reported in

Outstanding balances to be carded by collectors.

aggregate only. Items constituting such balances, however, will be carded by collectors, but only as to such as were assessed during the month for which the return is rendered, thus avoiding detailed statements each month of outstanding balances

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previously reported. A separate card (Form 1020) will be used for each such item ; and all cards so prepared each month should be arranged alphabetically, and so forwarded by the collector with his report on special Form 325.

W. H. OSBOEN,

Commissioner of Internal Revenue.

Approved :

W. G. McAdoo,

Secretary of the Treasury.

U. S. EEVISED STATUTES.

Sec. 3220.

Refund of taxes, penalties, etc.

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjiiactly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty : Provided, That where a second assessment is made in case of a list, statement or return which in the opinion of the collector

or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back, unless it is proved that said list, statement, or return was not false or fraudulent and did not contain any understatement or undervaluation.

[Comment: The Section of the Revised Statutes reprinted above is referred to in the regulations. Art. 33, Page 159, supra.]

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(T. D. 1916.)

Income tax.

Regulations prescribing form of certificate to be furnished by foreign organizations engaged in business in the United States and subject to the income tax on interest or other income collectible at the source.

Teeasuey Depaetment,
Office of Commissione of Inteenal Revenue,

Washington, D. C, December 5, 1913.

Foreign organizations engaged in business within the United States are subject to the normal tax of one per centum per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of its income withheld by a debtor or withholding agent.

The certificate to be furnished by foreign organizations engaged in business in the United States shall be in substantially the following form:

(Form 1018.)

•Certificate to be furnished by foreign organizations engaged in business in the United States.

I the of the

(Give name.) (Give official position.)

, a of

(Name of organization.) (Character of organization.)

, located at

(Country.) (Postoffice address.)

>do solemnly declare that said is a foreign

(Give name of organization.)

organization, engaged in business in the United States, and is the owner of
-\$ bonds of the denomination of \$ each, Nos

of the known as

(Give name of debtor.)

(Describe particular issue of bonds.)

(bonds, from which were detached the accompanying coupons, due

191-, amounting to \$, or upon which there matured ,

191-, \$ of registered interest, or is the owner of ,

(Property or investments.)

■upon which there was accrued 191-, \$ of in-
come.

Foster Income Tax. - 90.

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Under tlie provisions of the Income Tax Law of October 3, 1913, tlie said
organization is subject to the normal tax of one per centum per annum
upon the amount of net income accruing from business transacted and capi-
tal invested within the United States, for which tax it will make its return
in due course, but it hereby claims exemption from having the said normal
tax of one per cent on said income withheld at the source.

Date Name

Address

(Dist. ofSce.) (Official position.)

Of

(Name of organization.)

W. H. OsBOEN, Commissioner,
Approved :

W. G. McAdoo,

Secretary of the Treasury.

(T. D. 1920.)

Income tax.

Income tax ruling that certificates of ownership heretofore executed, or which may hereafter be executed, by the owners of bonds, etc., or their duly authorized agents, need not be signed with the full Christian name of the owner or agent, but the said owner, or agent, may use his ordinary or usual business signature.

Treasury Department^
Office of Commissioner of Internal Revenue,

Washington, D. C, December 20, 1913.

To collectors of internal revenue:

Certificates of ownership, heretofore executed by the owners of bonds, etc., or their duly authorized agents, in compliance with the income tax regulations and signed either with the Christian name or the ordinary or usual business signature, and giving the full address of the owner, shall be accepted by debtor organizations or their duly authorized withholding agents.

Hereafter, it will not be required that ownership certificates be signed with the full Christian names of the owners by the

TEEASTJtY KKIUTLATIONS.

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owners, or their duly authorized agents, but the said owners or agents may use their ordinary or usual business signatures, provided it identifies them and is accompanied by their complete address.

W. H. OSBOEN,

Commissioner.

Approved :

W. G. McAdoo,

Secretary.

[Released for publication December 22, 1913.]

(T. D. 1922.)

Income tax.

Collection at the source of income tax from certain municipal district or local bonds and other obligations.

Treasury Department,
Office of Commissioner of Internal Revenue,

Washington, D. C, December 27, 1913.

Until January 15, 1914, and thereafter until further instructions are issued, the income derived in the shape of interest from the obligations, general or special, of any State, or of any County, Municipality, or taxing District therein, shall be exempt from the collection of the income tax at the source, whether the payment of such obligation is provided for by general or local taxation, or out of a general, special or separate fund.

Any regulation or ruling of the Bureau of Internal Revenue in conflict herewith is hereby suspended as above provided.

W. H. OSBOEN,

Commissioner.

Approved :

W. G. McAdoo,

Secretary.

(Comment: This ruling modifies T. D. 1892, page 53, and T. D. 1910, page 77.)

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(T. D. 1946.)

Income tax.

Special assessment districts created under the laws of the several States for public purposes, such as the improvement of streets and public highways, the provision of sewerage, gas and light, and the reclamation, drainage or irrigation of bodies of land, and levee and school districts are held to be political subdivisions of a State.

Treasury Department,
Office of Commissioner of Internal Revenue,

Washington, D. C, February 10, 1914.

To collectors of internal revenue:

Referring to paragraph B, section 2 of the Income Tax Law, which reads as follows:

"That in computing net income there shall be excluded interest upon the obligations of a State or any political subdivision thereof,"

you are informed that under date of January 30, 1914, The

Honorable, The Attorney General, held that special assessment districts created under the laws of the several States for public purposes, such as the improvement of streets and public highways, the provision for sewerage, gas and light, and the reclamation, drainage or irrigation of bodies of land within such special assessment districts when such districts are for public use, are political subdivisions of the State within the meaning of the above proviso.

It is held that the term "political subdivision" includes special assessment districts or divisions of a State created by -the proper authority of the State acting within its constitutional powers and under its general laws, for the purpose of carrying •out a portion of those functions of the State which by long usage and inherent necessities of government have always been regarded as public.

Levee and school districts, when lawfully created under the authority of the State and which are authorized by the laws of -the State to levy a tax to meet the obligations of such districts, are also held to be political subdivisions of a State within the meaning of the Income Tax law.

TEEASUEY EEGULATIONS.

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The income derived from interest upon the obligations of all such public districts shall, therefore, be excluded in computing net income for the income tax.

This decision supersedes Treasury Decision 1910.

,W. PI. OSBOEIT,

Commissioner.

Approved ;

C. S. Hamlin,

Acting Secretary,

[Comment: See T. D. 1922, p. 98; T. D. 1910, p. YY, and T. D. 1892, p. 53.]

Teeasuey Depaetmbnt,
Office of Commissione of Inteenal Revenue,
Washington, D. C, February 10, 1914.

To collectors of internal revenue:

All Collectors of Internal Revenue who have not already done so will please arrange to inform the public, in their respective districts, through the press or other means of publicity without cost to the Government or by posting appropriate notices, that any assistance or information which may be required in connection with preparing and filing their Income Tax Returns will be gladly and promptly furnished by applying to or calling at any Internal Revenue Office.

In pursuance of the above. Collectors should assign from the present office forces, an employee or employees, as the case may require, who should be thoroughly posted on the provisions of the Income Tax law and all Treasury Decisions and Regulations in connection with same, particularly with relation to the Personal Tax and the filing of Individual Returns, to promptly furnish the public with information desired when calling at the various Internal Revenue Offices.

W. H. OSBOEN,

Commissioner.

Approved :

C. S. Hamlin,

Acting Secretary.

[Comment: The above is a copy of a mimeograph letter sent to Collectors.]

14:30 TEEASUKY EEGULATI^O^•S.

DEPAETME^lft OF JUSTICE,

Washington, D. C, February 12, 1914.

The Secretary of the Treasury.

Sir:

I have the honor to acknowledge your letter of the 20th ultimo, requesting an opinion upon a question arising in the administration of your Department, and involving the interpretation of that provision of the Income Tax Law which requires the withholding of the tax at its source, in its application to interest, etc., due copartnerships. The provision is as follows :

"All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensa-

tion, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding \$3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same ; and they are each hereby made personally liable for such tax. * * * "

The Act provides for administrative regulations governing the assessment and collection of the tax, to be promulgated by the Commissioner of Internal Revenue, with your approval. Accordingly, regulations have been issued covering the withholding at the source, under the above provision of law, of fixed or determinable gains, etc., due to a co-partnership which in substance provide for a certificate filed with the debtor on he-

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half of the partnership stating its ownership, and claiming as a deduction the legitimate expenses of the business; whereupon the debtor shall withhold from the partnership the tax upon the balance (T. D., 1887, T. D. 1905).

As I understand, your question is whether these regulations are in conformity with the provisions of the Income Tax Law. In my judgment, they are not.

The Act throughout speaks, in connection with the incidence of the tax, of "person" or "persons," "citizens of the United States whether residing at home or abroad," "any individual," "person of lawful age." Evidently a co-partnership does not come within such descriptions. This is clearly brought out in the specific provision for the taxation of copartnerships, which reads as follows :

" * * * Provided further. That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: * * * "

It is clear, therefore, that the Act has adopted the view of a partnership taken by the general law, namely, that "the in-

terest of each partner in the partnership property is his share in the surplus, after the partnership debts are paid" (U. S. v. Huck, 8 Pet, 271, 275) ; "the property or effects of a partnership belong to the firm and not to the partners, each of whom is entitled only to a share of what may remain after payment of the partnership debts and after a settlement of the accounts between the partners," (Bank v. Carrollton R. R., 11 Wall., 624, 628). Since the Act only permits withholding, at the source, of interest, etc., of a "person," and since the individual members of a partnership have no right to the credits of the partnership, either by the general law or under the provisions of the Income Tax Act, a debtor of a partnership has no interest,

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rent, etc., of the individual members of the partnership and has, therefore, nothing to withhold as to them. He owes the partnership only, and the partnership is not a taxable person under the provisions of the Act.

Respectfully,
(Signed) J. C. McEYITOLDS,

Attorney General.

(T. D. 1957.)

Income tax.

Partnerships are not subject to Income Tax, but are required to file certificates of ownership of bonds, etc., in connection with coupon and registered interest payments to prevent withholding of their income at the source.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C, March 12, 1914.

To collectors of internal revenue:

Referring to the following provision in Paragraph D of the Income Tax Law :

"That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed ;"

it is held : That the income of partnerships, per se, is not sub-

ject to the income tax. The provisions of the law "relating to the deduction and payment of the tax at the source of income" do not apply to the income of partnerships, as such. Taxable members of partnerships will be required to account, in their in-

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dividual returns, for their respective shares or interest in the partnership profits, whether the same are divided and distributed or not.

Partnerships ovs^ning "bonds and mortgages, or deeds of trust and other similar obligations of corporations, joint-stock companies or associations, and insurance companies," shall file certificates of ownership, in Form 1001, evidencing the fact of partnership ownership, when presenting for collection or payment coupons or interest orders for interest upon said obligations; and when such certificates are filed, the tax on such interest payments to partnerships shall not be withheld.

The last sentence in Art 14, page 35, and Art. 47 of Income Tax Eegulations No. 33, providing for claim by partnerships for deduction for. legitimate expense incurred in conducting the business of a partnership, are hereby superseded and repealed.

W. H. OsBOEN, Commissioner.

Approved:

W. G. McAdoo,
Secretary.

INCOME FEOM PAETJSTEKSHIPS.

Treasuey Depaetmbnt,

Washington, D. C, March 27, 1914.
(Vignette) S. H. B.
Office of

COMMISSIONEE OF InteENAL KeVENUE
IN EEPLYIWG EEFEET TO
INCOME TAX

The Corporation Trust Company,

Warren N. Akers, Washington Secretary,
Colorado Building, Washington, D. O.

Sie:

This office is in receipt of your letter of March 27, 1914, making the following inquiries :

"1. Referring to T. D. 1957, is it material to the Bureau

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of Internal Eevenue whether Form 1001 or Form 1003 is used?

"2. Is it the position of the Bureau that income received from a partnership cannot be traced to its source behind the partnership for the purpose of claiming individual exemption?"

In reply:

1. Treasury Decision 1957 provides for the use of Form 1001 by partnerships for the same reason that Form 1001 is provided for use by corporations ; viz., the provisions of the law "relating to the deduction and payment of the tax at the source of income" do not apply to the income of partnerships or corporations, as such. The fact of partnership identity can be as well established by Form 1003 as 1001, and, therefore, in cases where Form 1003 is used it may be accepted and no tax should be withheld.

2. There can be no withholding against a partnership except through laches of the partnership. - In the event of withholding against a partnership it has its remedy by making a proper showing.

The title to property and effects of a partnership is in the firm, and not the partners. The interest of each partner in the partnership property is his share in the surplus after the partnership debts are paid.

The identity of income, as it comes to a partnership, is lost upon its receipt by the partnership. The character of partnership profits divisible between partners has no reference to any character which, as income accruing to the partnership, it may have borne prior to receipt by the partnership.

It is therefore held that "income received from a partnership cannot be traced to its source behind the partnership for the purpose of claiming individual exemption."

RespectfuUy,

G. E. Fletchee,

Acting Commissioner.

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(T. D. 1974.)

Income Tax.

■Change of regulations as to certificates of ownership in connection with interest orders or checks for interest on registered bonds.

Treasury Department,

Office of Commissioner of Internal Revenue,

Washington, D. C, April 21, 1914.

To collectors of internal revenue:

Articles 41 to 46 [pp. 163-165] of the regulations are hereby amended so as to require, in the case of interest payments on bonds registered as to both principal and interest, that debtors in such cases shall deduct the normal tax of one per cent from accruing interest on all such bonds before sending out orders or checks for said interest to registered owners, unless there shall be filed with said debtor, at least five days before the due date of said interest, the prescribed certificates claiming exemption.

Where such certificates are so filed, the said debtors shall stamp or write on the interest orders or checks, as the case may be, "Exemption claimed by certificate filed with debtor."

Where prescribed certificates are not so filed, said debtor shall deduct and withhold the normal tax of one per cent from the amount of such payment, and shall stamp or write on the interest order or checks, as the case may be, "Income tax withheld by debtor."

Responsible banks, bankers, or collecting agents receiving for collection interest orders or checks bearing the aforesaid endorsements, may present said interest orders or checks for collection without requiring that certificates of ownership be filed therewith.

Certificates of ownership are not required to accompany interest orders or checks in payment of interest on fully registered bonds, as information as to ownership of bonds will be furnished by debtor organizations on monthly list returns. Form 1012

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[p. 83] ; but claim for exemption must be filed with debtors, or the tax must be withheld; and the form of certificate provided for use of owners of coupon bonds, may be used by owners of registered bonds for the purpose of claiming this exemption.

Where because of failure to file certificates claiming exemption, in compliance with above regulations, a part of the income from interest on registered bonds has been withheld for the payment of the normal income tax, debtors may, upon the filing of

the proper certificates as provided in Article 42 [p. 163], In-
come Tax Regulations, to the extent of exemption claimed, re-
lease and pay to the persons entitled thereto the amount of such,
income so withheld.

W. H. OSBOBN,

Commissioner.

Approved :

W. G. McAdoo,
Secretary.

OWNERSHIP CERTIFICATES- STREET ADDRESS.

[From the records of the Corporation Trust Company, p. 242. J

Treasury Department,

Office of Commissioner of Internal Revenue, .

Washington, D. C, April 23, 1914.

L. F. Saile Esq.,

Assistant Cashier, The National Park Bank,
New York, N. Y.

Sir:

Replying to your letter of April 15, 1914, relative to street
address on certificates, you are advised that banks should exer-
cise care in securing full post office address on certificates.
Where no street address is given, this office will assume that
same is not necessary in addressing mail, and certificates will
NOT be returned for correction.

Respectfully,

(Signed) L. F. Speer,
Deputy Commissioner.

TREASURY REGULATIONS. 1437

OWNERSHIP CERTIFICATES- IDENTIFICATION"
OF SIGNATURES.

Treasury Department,

Office of Commissioner of Internal Revenue,

Washington, D. C, April 16, 1914.

The National Park Bank,
New York City.

<xENTLEMEN :

This office is in receipt of your letter of April 2, 1914, inquiring if it is necessary when an income tax certificate is signed in behalf of an owner by a reputable foreign bank, or a bank in this country, to identify the signature of such bank after the same form that is required when the income tax certificate is signed in behalf of the owner by an agent or attorney.

In reply you are advised that the regulations provide that reputable banks or collecting agents may execute the certificate of ownership, which is required to be filed by non-resident aliens, and the endorsement "satisfied as to identity and responsibility of agents" is NOT required.

Respectfully,

(Signed) L. F. Speee,
Dept. Commissioner.

(T. D. 1995.)

Income tax.

Assessed taxes - Notice and demand. Form 17.

Notice of and demand for assessed taxes to be issued promptly to secure tax lien, penalty, and interest in case of nonpayment.

1438 teasl'ky kkg ulatioxs.

Teeasury Department,
Office of Commissioner of Internal Revenue,
Washington^ D. C, June 12, 1914.

To collectors of internal revenue:

It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent penalty and interest at 1 per cent per month in the case of income tax remaining unpaid after June 30 or other due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (Art. 197, Regs., 33) issued on the subject.

The necessity of issuing Form 17 is twofold - first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return

is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of non-payment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest.

In all cases, therefore, where an assessed tax remains unpaid after it becomes due a notice on Form 17 should be at once issued, to be followed when necessary, by Forms 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.

A misunderstanding on the part of certain collectors as to these requirements has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending.

W. H. Osborne,
Commissioner of Internal Revenue,

(T. D. 1996.)

Income tax.

Co-operative dairies and like organizations do not fall within the classes of organizations enumerated in subsection G, Soc-

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tion 2, Act of October 3, 1913, as exempt, and are required to make returns of annual net income.

Teeasuey Depaetment^
Office of CoMMissroiirEE of Inteenal Kevenue,
Washington, D. C, June 15, 1914.

To collectors of internal revenue:

Attention is called to Article 92 of Regulations No. 33, Approved January 5, 1914, [page 180] in which it is provided that cooperative dairies not issuing stock and allowing patrons dividends based on the percentage of butter fat in milk furnished, are not liable to the requirements of Section 2, Act of October 3, 1913.

This Article is amended to the effect that cooperative dairy associations, whether issuing capital stock or not, are required to make returns of annual net income pursuant to the requirements of this act.

The only corporations, joint-stock companies, or associations, or insurance companies, exempt from the requirements of this

act are those which fall within one or another of the classes specifically enumerated in the first proviso of subsection G of the act cited, as exempt.

Cooperative dairies, no matter how organized, do not appear to fall within any of these exempted classes and will, therefore, be required to make returns.

In the preparation of their returns, cooperative dairies may include in their deductions from gross income the amount actually paid to members and patrons for milk, but any amount retained at the end of the year over and above expenditures will be returned as net income upon which the tax will be computed and assessed.

In so far as Article 92, hereinbefore referred to, is in conflict with this ruling, it is hereby revoked, and Collectors will require all organizations of this character to make returns of annual net income and in other respects comply with the requirements of the Federal income tax law as it applies to corporations, joint-stock companies, or associations, and insurance companies.

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In so far as applicable, this ruling also applies to mutual or cooperative telephone companies, farmers' insurance companies, and like organizations.

W. H. OSBOEN,

Commissioner of Internal Revenue.
Approved :

W. G. McAdoo,

Secretary of the Treasury.

(T. D. 199Y.)

Income tax.

Monthly list returns not to be made under oath.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., June 16, 1914.

To collectors of internal revenue:

The requirement that monthly list returns be made under oath (as provided by Articles 35, 50, 53 and 59, Income Tax Regulations No. 33, when filed by withholding agents on or before the 20th of the month following that in which withholding occurred) is hereby waived.

In all cases the annual list return required of withholding agents (of which the monthly list returns will form a part as required by regulations) will be made, sworn to and filed as now required by existing regulations and the jurat for the annual list return will cover the entire return as thus made up.

Respectfully,

W. H. OSBOEN,

Commissioner.

Approved :
W. G. McAdoo,
Secretary.

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(T. D. 2005.)

Income tax.

Loss: Instructions and rules for determining what amount is to be allowed as a deduction for loss in a return of income.

Depreciation allowed by law does not include shrinkage in value of stocks, bonds, etc.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., July 8, 1914.

To collectors of internal revenue and revenue agents:

For the purpose of checking up returns and ascertaining the amount of taxable income of individuals and corporations, you are given the following instructions and rules for use in determining the amount of deductible loss allowable to individuals and corporations under the fourth deduction [Paragraph B, page 7], and second deduction, for domestic corporations [Paragraph G, page 16], and second deduction, for foreign corporations [Paragraph G, page 18].

The loss considered here has in it no element of "depreciation" or "allowance for wear and tear," or "compensation from insurance or otherwise." It is to be such loss as is absolute and complete and which has been actually sustained.

Depreciation as an allowable deduction in ascertaining an-

nual net income for the income tax is separately provided for, and is not to be confused with loss. The depreciation provided to be taken as a deduction in a return of income is the value assigned to the deterioration of physical improvements or assets, such as are susceptible of having their value lessened through wear and tear, use or obsolescence.

The depreciation referred to in the income tax law does not relate to evidence of a right or interest in property, and hence, any shrinkage in the value of bonds, stocks and like securities, due to fluctuations in their market value, is not deductible in a return of income as depreciation or loss.

Losses may be sustained by individuals or corporations on Foster Income Tax. - 91.

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personal or real property. Only those losses are deductible which are sustained during the tax year "in trade" - that is, the business which engages the time, attention and labor of any one for the purpose of livelihood, profit or improvement. Loss to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment, but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be incurred in trade, and be determined and ascertained upon an actual, a completed, a closed transaction.

Losses sustained by individuals or corporations from the sale of or dealings in personal or real property growing out of ownership or use of or interest in such property, will not be deductible at all unless they are an incident of, connected with and grow out of the business of the individual or corporation sustaining the loss, and are ascertained, determined and fixed as absolute in the above sense, within the taxable year in which the deduction is sought to be made. When loss under this heading is ascertained to be deductible, the entire amount of the loss will be deductible except where the property, in connection with which the loss occurred, was acquired prior to March 1, 1913, in the case of individuals, and prior to January 1, 1909, in the case of corporations, and then, and in such event, the loss ascertained will be prorated over the whole time the property was held, and that part of the whole loss apportioned to the taxable period will be taken into account in annual returns of income. In prorating, fractional parts of years will not be considered

Loss is the difference between selling price and cost, where the selling price is less than cost.

Cost of property purchased prior to the incidence of the special excise tax (January 1, 1909) or the incidence of the income tax (March 1, 1913) will be the actual price paid for the property, including the expense incident to the procurement

of the property in the first instance and its sale thereafter, together with carrying charges of interest, insurance and taxes actually paid prior to the incidence of tax (special assessments, if any, "actually paid" as "local benefits" in connection with

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real estate) ; provided that where, up to the incidence of the tax, the expense of carrying property has exceeded the income from it, the difference between the expense of carrying and the income from the property shall be added to the purchase price and the sum thus ascertained shall be the cost of the property ; and provided further, that in the case of property purchased prior to the incidence of the tax and sale thereof subsequent to the incidence of the tax, there shall be excluded from consideration in ascertaining cost any items of income, expense, interest and taxes previously taken into account in preparing a return of annual net income.

The cost of property acquired subsequent to the incidence of the tax will be the actual price paid for it, together with the expense incident to the procurement of the property in the first instance and its sale thereafter, and the cost of improvement or development, if any.

All existing rulings and regulations in conflict herewith are hereby annulled and superseded.

W. H. OSBOEN,

Commissioner,
Approved :

W. G. McAdoo,

Secretary.

(T. D. 2013.)

Income tax.

Non-resident aliens; Amendment of Article 8 of Regulations 33, providing for the collection of tax on income of non-resident aliens derived from trades or professions in the United States.

Teeasuey DePAETMENTj
Office of Commissione of Inteekal Revenite,
Washington, D. C, Aug. 12, 1914.

To collectors of internal revenue:

Article 8, Income Tax Regulations 33 [Page 150], is hereby amended by adding thereto the following:

The person, firm, company, co-partnership, corporation, joint-

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stock company or association and insurance company in the United States - citizen or resident alien - in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income, of whatever kind, to a non-resident alien, under any contract or otherwise, and which payment shall represent income of a non-resident alien from the exercise of any trade or profession within the United States, shall make return for such non-resident alien on form 1040 and shall pay any and all tax-normal and additional tax - chargeable upon the said income of such non-resident alien.

So that Article 8 as amended shall read;

Art. 8. The income of non-resident aliens subject to the normal tax of 1 per cent, shall consist of the total gains, profits, and income derived from all property owned, and from every business, trade, or profession carried on within the United States (to be designated as gross income), less deductions (1 to 8, inclusive) specifically enumerated in Paragraph B of the Act (see Art. 6), in so far as said deductions relate to said gains, profits, etc.

The specific exemption in Paragraph of the Act cannot be allowed as a deduction in computing the normal tax of non-resident aliens.

Non-resident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States.

The responsible heads, agents, or representatives of said non-resident aliens who are in charge of the property owned or business carried on shall make full and complete return of said income and shall pay the tax as provided herein.

The person, firm, company, co-partnership, corporation, joint-stock company or association and insurance company in the United States - citizen or resident alien - in whatever capacity acting, having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits and income, or whatever kind, to a non-resident alien, under any contract or otherwise, and which payment shall

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represent income of a non-resident alien from the exercise of any trade or profession within the United States, shall make return for such non-resident alien on form 1040 and shall pay any and all tax - normal and additional tax - chargeable upon the said income of such non-resident alien.

W. H. OSBOEN,

Commissioner.

Approved :

W. G. McAdoo,
Secretary.

(T. D. 2022.)

Income tax.

Waiver until further notice of Regulation requiring the filling in on certificates of numbers of bonds.

Treasury Department,

Office of Commissioner of Internal Revenue,

Washington, D. C, October 3, 1914.

^Notice is hereby given that Regulation requiring the filling in on certificates of numbers of bonds, or other like obligations of corporations, etc., from which interest coupons are detached or upon which registered interest is to be paid - which was extended to October 31, 1914, by T. D. 1985, issued May 28, 1914, - is hereby waived until further notice.

RoBT. Williams, Jr.,
Acting Commissioner.

Approved :

W. G. McAdoo,
Secretary.

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(T. D. 2023.)

Income tax.

Amending Article 58, Income Tax Kegulations 33, requiring endorsement or stamp on foreign coupons, checks, bills of exchange, etc.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C, October 12, 1914.

To collectors of internal revenue:

Article 58, Income Tax Regulations, 33, [page 170] is hereby amended to read as follows :

Article 58. The licensed person, firm or corporation first receiving such foreign items for collection, or otherwise, shall withhold therefrom the normal tax of one per cent., and will be held responsible therefor. If the foreign item is in the form of a check or bill of exchange, the words "Income Tax withheld

by " (giving name, address and date) shall be endorsed

or stamped thereon by such licensee; but if the item is represented by a coupon or coupons from bonds, the licensee shall attach thereto a statement identifying the same, and the endorsement or stamp showing the tax withheld shall be placed on the statement instead of the coupon or coupons.

Said endorsement or stamp shall be sufficient evidence of tax withheld to relieve subsequent holders or purchasers from the obligations of withholding.

Approved :

W. G. McAdoo,
Secretary.

Robert Williams, Jr.,
Acting Commissioner,

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ONE OWNERSHIP CERTIFICATE SUFFICES FOR
COUPONS OF DIFFERENT DATES FROM SAME
BOND ISSUE.

Treasury Department,

Washington D. C, November 2, 1914.
W. G. P.

The Corporation Trust Company,
Colorado Building,

Washington, D. C.
(jtEntlemen :

This office is in receipt of your letter dated October 29, 1914, requesting information in regard to certificates of ownership filed in connection with coupons which became due at different dates.

In reply you are advised that the owner of the bonds may file one certificate in connection with coupons which became due at different dates, provided the coupons are from bonds of the same debtor corporation and of the same issue, but the dates on which the coupons became due should be shown. When listing such a certificate on Form 1012 only one entry is necessary.

Respectfully,
G. E. Fletchee,
Deputy Commissioner.

[From the records of The Corporation Trust Company, p.

319].

Extent to which T. D. 2023 (page 312) modifies T. D. 1992

(page 272).

Treasury Department,
Internal Revenue Service,
New York, N. Y., November 9, 1914.
Irving National Bank,
Woolworth Building,
New York City.

SiEs:

Your letter under date of October 31st addressed to Robt.

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Williams, Jr., Acting Commissioner, has been referred to this office for reply.

You are advised that T. D. 2033 [page 312] does not modify, in any way, the ruling contained in Treasury Decision 1992 [page 272], except that a licensee shall place no endorsement or stamp on a coupon detached from a foreign bond, and shall attach thereto a statement identifying the same, and the endorsement or stamp showing the tax withheld shall be placed

on the said statement instead of on the coupon.

When coupons, detached from bonds of a foreign corporation and payable wholly within the United States, or within or without the United States, at the option of the owner of the bonds, are received by a licensee with certificates of ownership, claiming or not claiming exemption, attached, they shall be treated exactly the same as domestic items, and the said certificates shall accompany the coupons when forwarded for payment to the American fiscal agent of the foreign corporation.

Respectfully,

(Signed) Chaeles W. Anderson,

Collector.

[From the records of The Corporation Trust Company, p. 321.J

(T. D. 2048.)

Income tax.

Taxable status of dividends paid on the capital stock from the current net earnings or established surplus created from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income.

Teeasuey Depaetment,
Office of Commissionee of Inteenal Revenue,
Washington, D. C, November 12, 1914.

To collectors of internal revenue-:

Dividends from the net earnings or established surplus created from the net earnings of any corporation, joint-stock com-

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pany or association and insurance company, are vested in the stockholder on the date on which such dividends are declared, whether distributed or not, and regardless of the time when the surplus or undivided profits from which such dividends are declared were earned and entered on the books of the corporation as such. Dividends so declared should be accounted for in full in the returns of income of individuals for the year in which they become due and payable, whenever the amount of income

is sufficient to require the inclusion of dividends, as provided in Paragraph D of the Income Tax Law and T. D. 1945, and should be included in the gross income of corporations, etc., regardless of the amount of income.

All decisions and regulations which are in conflict herewith are hereby revoked.

(T. D. 2049.)

Income tax certificates.

Income tax certificates which are not required by specific statute, but by regulations only, are not subject to tax as "certificates required by law" under Act of October 22, 1914.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C., November 12, 1914.

Sir:

In reply to your verbal inquiry as to whether certificates of ownership, certificates of exemption, and other certificates required by the Income Tax Regulations but not by specific statute are subject to tax as certificates required under the Internal Revenue Act of October 22, 1914, I beg to advise you that they are not.

While regulations made pursuant to and under authority of law as a rule have the force and effect of law, it is held by this office that it was not the intent of Congress to tax certificates

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which are required by regulations of the Department for its own purposes and not by any express provision of law.

Respectfully,

W. H. OSBOEN,

Commissioner.

Me. .

(T. D. 2077.)

The gain or loss resulting from the sale of capital assets and apportioned to the years subsequent to January 1, 1909, should be increased or decreased, accordingly as there was gain or loss, by the amount of depreciation charged off since January 1, 1909, and not used to make good such

depreciation.

Teeastjey Depaetment,
Office of Commissione of Inteenal Revenue,
Washington, D. C, November 21, 1914.

To collectors of internal revenue:

Article 110 of Eegulations ISTo. 33 [Page 184] should be, and
is hereby, amended to read as follows :

"Art. 110. - For the purpose of determining the amount of profit or loss arising from the sale of capital assets acquired prior to January 1, 1909, which shall be taken into account by corporations in making their returns of annual net income, the gain or loss represented by the difference between the purchase price and the selling price shall be prorated according to the number of years the assets were held prior to their sale, and the amount thus apportioned, or apportionable, to the years subsequent to January 1, 1909, shall be included in or deducted from the gross income of the year in which the assets were sold, accordingly as they were sold for more or less than their original cost. To any gain thus apportioned and to be included in income there should be added any amount, or amounts, which had been charged against and deducted from gross income, during the years since the inception of the special excise tax law, on account of depreciation and which had not been paid out in making good the depreciation - that is, any

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amount charged off subsequent to January 1, 1909, on account of the depreciation of the assets sold and not used to make good such depreciation shall be added to the gain apportioned to these years and will be included in the income of the year in which the property was sold. Likewise, for the purpose of a deduction from gross income of the year in which the assets were sold, loss resulting from any such sale, apportionable to the years subsequent to January 1, 1909, will be reduced by the amount of the unused portion of the depreciation charged off with respect to such assets since January 1, 1909."

This ruling, in so far as it relates to depreciation, applies only to such tangible property as is subject to wear and tear, exhaustion and obsolescence, and is not to be construed as recognizing any gain or loss due to fluctuations in the market value or arbitrary changes in the book value of securities and like assets, the gain or loss with respect to which will be determined only when such assets mature, or are sold or disposed of - that is, when there is a completed, a closed, transaction. (See T. D. 2005, Page 28T.)

(T. D. 2079.)

Income Tax liability and withholding requirements in connection with quarters, heat and light, mileage, reimbursement for actual expenses, and per diem allowances in lieu of subsistence while traveling under orders, furnished or paid by the Government to officers and employees.

TeEASUEY DEPAETMEJITT,

Office of Commissionee of Inteenal Revenue,
Washington, D. C, November 24, 1914.

To collectors of internal revenue ':

All decisions and regulations which are in conflict with the holdings that follow are hereby revoked.

(a) INCOME TAX LIABILITY.

(1) QUARTEES: Commutation of quarters and the money equivalent of quarters furnished in kind shall be returned as income.

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When quarters arc furnished in kind, of a less number of rooms than the number allowed by law, the money equivalent only of the number of rooms actually assigned shall be returned as income. When quarters are furnished in kind, of a greater number of rooms than the number allowed by law, it is to be assumed that the excess number is assigned for the convenience of the Government, and the money equivalent only of the number of rooms allowed by law shall be returned as income.

(2) HEAT AND LIGHT: Amounts received by, or paid an officer for heat and light shall be returned as income.

this includes the money equivalent, as fixed by the Government, of heat and light furnished to an officer occupying public quarters.

(3) MILEAGE: The difference between the amount received as mileage and the amount of actual necessary expenses incurred on a journey shall be returned as income.

Mileage, as such, is not gain, profit, or income to the officer, as he is required to pay his actual expenses while traveling under mileage orders. The gain, profit, or income is the difference between the amount received as mileage and the amount properly expended by the officer while traveling ; and this difference, only, should be returned as income.

The actual expenses to be deducted by the individual before ascertaining his gain, profit, or income on account of mileage

are the expenses for which reimbursement would be made by the Government if he had traveled on an actual expense basis instead of a mileage basis.

(4) REIMBURSEMENT FOR ACTUAL EXPENSES:

Amounts paid by the Government in the nature of reimbursement for subsistence and other items of actual expenses incurred while absent on business for the Government are not required to be returned as income.

(5) PER DIEM ALLOWANCES IN LIEU OF SUBSISTENCE WHILE TRAVELING UNDER ORDERS:

The difference between the amount received as a per diem allowance and the amount of actual necessary expenses incurred on a journey shall be returned as income.

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(b) WITHHOLDING REQUIREMENTS.

Payments in connection with (1) QUARTERS, (2) HEAT AND LIGHT, (3) MILEAGE, (4) REIMBURSEMENT FOR ACTUAL EXPENSES, and (5) PER DIEM ALLOWANCES IN LIEU OF SUBSISTENCE WHILE TRAVELING UNDER ORDERS are indefinite and irregular as to right of possession, amount, and time of accrual ; and are not, therefore, subject to withholding as "fixed or determinable annual or periodical gains, profits, and income" under the requirements of the Income Tax Law.

Procedure for handling coupons from bonds of corporations exempt from income tax.

Treasury Department,
Washington, D. C., November 18, 1914.

Geo. H. Moore, Esq.,

Collector of Internal Revenue,
St. Louis, Mo.
Sir:

Inclosed find letter from the Mercantile Trust Company, St. Louis, Missouri, dated November 12, 1914, stating that in a letter from this office to the Corporation Trust Company, dated July 30, 1914, [page 297] appears the following in connection with the collection of coupons from bonds of organization exempt under the first proviso of paragraph G from the withholding features of the Income Tax Law.

"If such coupons are presented to a bank or collection Agency for collection in the ordinary course a Certificate of Ownership and Exemption should be attached thereto, or the normal tax will be deducted and withheld." The company inquires whether a certificate of Ownership and Exemption should be filed with coupons from bonds of such an organization.

You may inform the company that imder the present ruling of this offiice a Certificate of Ownership should be attached to coupons from bonds of organizations exempt under the first

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proviso of paragraph G from the withholding features of the Income Tax Law. This Certificate need not claim exemption as the debtor corporation, or the fiscal agent, should pay the full amount of the coupon whether the certificate filed there-with claims exemption or not.

It is only when coupons from bonds of such an organization are presented for collection unaccompanied by a certificate of ownership that the normal tax is required to be deducted and withheld therefrom.

Respectfully,

(Signed) L. F. Speek,

Deputy Commissioner.

[From the Eecords of The Corporation Trust Company, p. 336].

December 11, 1914.

Tax exempt covenant on bonds.

[Comment: The following is an extract from a letter Just received by the Collector of Internal Revenue, Boston, from the Treasury Department.]

"You are advised, and should so inform Messrs. Homblower & Weeks, that the issuance of bonds containing a 'tax free,' or 'no deduction' clause is not prohibited by any provision of the Federal Income Tax Law. However, paragraph E, section 2, of the act of October 3, 1913, provides :

" 'Nothing in this section shall be construed to re-lease a taxable person from liability for income tax, nor shall any contract entered into after this act takes effect be valid in regard to any federal income tax imposed upon a person liable to such payment.'

"Therefore such a clause will not release a taxable per-son from liability for income tax on income derived from

such bonds, and the debtor corporations, or its duly authorized agent in paying coupons from such bonds, will

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be held responsible for the normal tax due in such cases when no tax is withheld and no exemption claimed."

[From the records of The Corporation Trust Company, p. 337].

Corporation assuming payment of bonds and coupons under mortgage of individual - Duty as to withholding tax.

Tebasuet Depaetment,
Office of Commissione of Iitteenal Revenue,
Washington, November 4, 1914.

First Trust and Savings Bank,

Hoy C. Osgood, Assistant Trust Officer,
Chicago, 111.
SiEs:

This office is in receipt of your letter of October 31, 1914, asking whether certificates should accompany coupons from bonds under the following circumstances :

An individual issues coupon bonds secured by a mortgage upon real estate. Subsequently a corporation purchases the real estate and assumes (as between the mortgagor and itself) the payment of bonds and coupons. After the purchase by the corporation, is it necessary for ownership certificates to accompany the coupons when they are presented for payment?

This office holds that the situation is not changed by the purchase by the corporation. The corporation purchased only the mortgagor's equity of redemption; (and the mortgagor's possession) ; the property is the security and the character of the bond obligation remains unchanged and as created, even though the corporation is to pay all interest and will ultimately pay off the mortgage. There will be no withholding by the corporation (it being placed in the stead of the mortgagor) until the interest payment to any one person in any year is \$3,000 or over.

[From the records of The Corporation Trust Company, p.

338].

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(T. D. 2090.)

Income tax.

Synopsis of rulings on questions relating to the income tax imposed by Section 2 of the Act of October 3, 1913.

Teeasuet Depaetment,
Office of Commissionee of Ijstteenal Kevenue,
Washington, D. C, December 14, 1914.

The following synopsis of rulings on questions relating to the income tax imposed by section 2 of the Act of October 3, 1913, on individuals, corporations, joint-stock companies, associations, and insurance companies, is published for the information of internal revenue officers and others concerned. All rulings, or parts of rulings, heretofore made which are in conflict herewith are hereby revoked.

PART I.

Rulings in Relation to Personal Income Tax.

Actors and Actresses. If costumes purchased by actors and actresses are used exclusively in the production of a play, and are not adapted for occasional personal use, and are not so used, a deduction may be claimed on account of such depreciation in their value as occurs during the year on account of wear and tear arising from their use in the productions of the play, or to their becoming obsolete at the close of the production.

Administration of estates, expenses of. Expenses of administration of an estate, such as court costs, attorneys' fees, executors' commissions, etc., are chargeable against the corpus of the estate and are not allowable deductions in a return of a fiduciary on Form 1041.

Administrators. See Executors and administrators.

Agent. The word "agents" as used in paragraphs D and E of the income-tax law in connection with the words "control, re-

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ceipt, custody, disposal or payment of income to another person," does not relate to agents not acting in a fiduciary capacity. Agents not acting in a fiduciary capacity have no responsibility with reference to withholding the tax on, or making a return of, income turned over to resident aliens or citizens of the United

States; but the responsible heads, agents, or representatives of non-resident aliens who are in charge of property owned, business carried on, or capital invested within the United States, shall make full and complete returns of the income therefrom on Form 1040, revised, and pay the tax thereon. See Non-resident alien, agent of.

Agent, real estate. See Real estate agent.

Agent for non-resident alien. See Non-resident alien, agent of.

Aids' pay. See Pay.

Alimony. Alimony is regarded as fixed and determinable income, and in cases where it is in excess of \$3,000 the person paying such alimony is required to withhold the normal tax on the same unless exemption is claimed under paragraph C, in which case the normal tax will be withheld only on the amount paid in excess of the exemption claimed. It must be accounted for as income if, together with other income, the recipient is in receipt of a net income of \$3,000 or more. It is regarded as a personal expense to the person paying it and is, therefore, not an allowable deduction in his return.

Annuity. The amount paid under a life insurance, endowment, or annuity contract is not income when returned to the person making the contract, either upon the maturity or surrender of the contract; but the amount by which the sum received exceeds the sum paid and coming into the hands of the person making the contract and payment is income. When the settlement under such a contract is made in more than one payment each payment will be considered as being composed of interest and a proportionate part of the principal. "Where the entire annuity is composed of an interest return upon the principal sum paid therefor, the entire annuity is income.

Assessments on stock. Assessments made by a corporation

on its capital stock are regarded as an investment of capital
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and do not constitute an allowable deduction in the return of the individual.

Bad debt. See Debt.

Beneficiary. A beneficiary is liable for the normal tax upon the amount of net income derived by him from a taxable source through a fiduciary less the amount of exemption claimed, and the amount of income on which the normal tax has been withheld at source, and is also liable for the additional tax assessable on the amount of net income received by him in excess of \$20,-

000; and in order to determine whether the net income of a beneficiary is or is not in excess of \$20,000 and subject to the additional tax, the amount derived by him from an estate and all other taxable sources is required to be shown on his personal annual return.

Board of education, requirements of with reference to withholding. See Rent.

Bond, premium on. Where an employee is required to furnish bond and pay the premium on such bond, as a necessary incident of his employment, the premium on the bond will constitute an allowable deduction in computing net income.

Bonds containing tax-free covenant clause. The stipulation in bonds whereby the tax which may be assessed against them, or the income therefrom is guaranteed, is a contract wholly between the corporation and the bondholder, and in so far as the income tax law applies, the Government will not differentiate between coupons from bonds of this character and those from bonds carrying no such guaranty. The debtor corporation or its duly authorized withholding agent will be held responsible for the normal tax due in such cases when no exemption is claimed. When coupons are accompanied by certificates of ownership in which no exemption is claimed, the income from such coupons may be included in the return of the individual (under column A, p. 2, of Form 1040, revised) as income upon which the normal tax of 1 per cent has been paid or is to be paid at the source. (T. D. 1948.)

Bonds, interest on. The exchange of interest coupons for funding bonds is a payment of interest on the bonds and the income tax should be imposed and paid upon such interest as

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income for the year in which it matures and such payment is made, and in the absence of proper claim for exemption the tax should be deducted and withheld on the amount represented by the coupons.

Book value. Book values which reflect a shrinkage in the value of assets are not a basis for determining taxable income. (T. D. 2005.)

Certificate of merit, pay for. See Pay.

Certificate of ownership. Where bonds, under contract provisions in the bonds, are retired within an interest period and prior to the expiration of the full term of the bond, ownership certificates will be required and should cover that part of the interest period affected between the beginning of such period and the date of the retirement of the bonds.

Certificates. The department will furnish blank forms of

certificates to be used in connection with the collection of the income tax by such parties as may make application for the same. Private corporations and others desiring to have these certificates printed for themselves may do so if they will strictly observe the requirements of the department as to size, print, form, color, and contents. (T. D. 1939.)

Certificates to be used in claiming exemption from withholding on income derived from foreign sources. See Income derived from coupons, checks, etc.

Citizenship. An American woman who marries a foreigner takes the nationality of her husband and can not claim exemption under paragraph C.

Clubs. All clubs are not exempt from the provisions of the income-tax law, even though not operated for profit. A club desiring to be registered as an exempt organization should file with the Commissioner of Internal Revenue a copy of its charter, or an affidavit of its principal officer, setting forth the nature of its organization, the purpose for which organized, the source, if any, from which it derives income, and the disposition made of such income as is received by it for consideration and determination as to whether or not it comes within the class of organizations held to be exempt under the provisions of paragraph G of the income-tax law.

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Commission. A commission paid to a real estate agent for collecting rents and management of property is a legitimate business expense and constitutes an allowable deduction in computing net income.

Commission on renewal premium. See Renewal premium.

Commissions. See Compensation.

Commissions paid salesmen. Commissions paid to salesmen as a part of the expense of conducting business are allowable deductions to the payer of the commission. Such commissions, however, are income and should be accounted for in the return of the person receiving them. When indefinite as to amount and time of accrual, they are not subject to withholding.

Commutation of heat and light. Amounts paid on account of commutation of heat and light are not subject to withholding. (T. D. 2079.)

Commutation of quarters. Payments made on account of commutation of quarters are not subject to withholding. (T. D. 2079.)

Compensation. (1) A person receiving a salary in excess of \$4,000, and, in addition, a commission of 1 per cent on all

sales, the exact amount due on account of commissions not being determinable until February following the year in which the commissions were earned, at which time both his salary for the preceding year and his commissions are paid to him, should return as income, for the year in which payment was made, the aggregate amount received on account of salary and commissions. The normal tax should be deducted and withheld therefrom when the combined payments of salary and commissions aggregate in excess of \$3,000, subject to authorized exemption claimed. The normal tax deducted from these payments should be accounted for on the withholding agent's return. Form 1042, for the year in which the deductions were made.

(2) Where an employee is paid a sum equal to two years' salary on condition that he surrender his contract of employment, such sum should be reported by him on his annual return as income, and if the sum paid exceeds \$3,000, the normal tax should be deducted and withheld therefrom, subject to authorized exemption claimed.

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(3) When profits distributed by a corporation to an employee, together with payments of the employee's salary, aggregate in excess of \$3,000, the normal tax should be deducted and withheld therefrom, subject to authorized exemption claimed.

Compensation for service upon an annual, monthly, or weekly basis. Where a service and payment period is divided by the end of a taxable year, the compensation for the period so divided at the end of the year will be accounted for in the return for the year in which payment is made and received. Where the service is of such nature as to be compensated by fee, or of such nature that no portion of the amount becomes due until the service is completed, then the total amount of the compensation should be included in the return for the year in which the compensation is received.

Compensation, value of quarters furnished, part of. Where an individual is furnished living quarters in addition to salary, the rental value of such living quarters is regarded as compensation subject to the income tax.

Corporation notes for a period of one year or less. See Promissory note of corporations.

Corporations, equipment trust notes of. See Equipment trust notes.

Corporations, obligations of. Obligations of corporations similar to bonds, mortgages, deeds of trust, etc., for income-tax purposes are held to be those obligations of corporations which, though not bonds, mortgages, or deeds of trust, are similar in form, purpose, or in being extended beyond the time of ordinary, bankable, commercial paper. Interest payments on ordi-

nary, bankable, commercial paper of corporations payable to individuals are subject to withholding at the source only when the payment to any one individual within a taxable year exceeds \$3,000. On all other obligations of corporations, etc., payable to individuals, interest payments are subject to withholding regardless of the amount of interest payment. See Mortgage, property purchased subject to.

Corporations, principal place of business of. The principal place of business of a corporation is the place or office in

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which are kept the books of account and other data from which the return is to be prepared.

Corporations, property purchased by, subject to mortgage. See Mortgage, property purchased subject to.

Corporations, residence of. Corporations whose business is done wholly in Porto Porto Eico and the Philippine Islands, even though incorporated in the United States, are held to be resident corporations of these possessions, and will make returns and pay the income tax to the collectors of internal revenue having jurisdiction there.

Costumes. See Actors and actresses.

Debt. A bad or worthless debt, as contemplated by the income-tax law, and which may be deducted in a return of income, is a debt which has been actually ascertained to be worthless and charged off within the taxable year.

Decedent, return of a. See Executors and administrators.

Deductions, paragraph B. (1) Necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses.

(2) All interest paid within the year by a taxable person on indebtedness.

(3) All national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits.

(4) Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise.

(5) Debts due to the taxpayer actually ascertained to be worthless and charged off within the year.

(6) A reasonable allowance for the exhaustion and wear and tear of property arising out of its use or employment in

the business not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made; but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made provided that no deduction shall be allowed for any amount paid out for new buildings, permanent improvements,

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or betterments made to increase the value of any property or estate. (See Paragraph B, section 2, act of October 3, 1913.)

Depreciation. See Actors and actresses.

Dividends declared by foreign corporations transacting business wholly within the United States. See Foreign corporations, property owned and business transacted wholly within the United States.

Drainage, irrigation and reclamation districts, interest on bonds of. See Special assessment districts.

Employees, foreign, of domestic corporations. See Foreign employees of domestic corporations.

Equipment trust notes. Equipment trust notes secured by mortgage issued by a corporation are subject to withholding. Temporary receipts issued pending preparation and issue of the notes themselves stand in the place of the notes, and where an interest period intervenes and receipts are to be presented for indorsement thereon of a payment of interest, requisite certificates of ownership claiming or not claiming of exemption should be filed.

Executors and administrators. If the net income of a decedent from January 1 of the year in which he died to the date of his death, was \$3,000 or over, a return for such decedent must be made by the executor or administrator on Form 1040, revised, and such executor or administrator may claim all deductions and exemption to which the decedent would have been entitled under the law.

Exempt organizations. Any organization which has been held by the Commissioner of Internal Revenue to come within the class of organizations enumerated in paragraph G of the income-tax law is not required to deduct and withhold the normal tax from the amount of any salary or interest paid by it, and it is subject to no requirements of said law. However, the owner of bonds issued by such an organization is not relieved from the filing of certificates of ownership, with coupons detached from such bonds when presenting same to a bank or other collecting agency for collection or otherwise, or to the debtor corporation or its duly designated paying agent for payment; and while such an organization as the source of

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income is under no obligation to withhold the tax in cases where no exemption is claimed, it should, nevertheless, forward with a letter of transmittal such certificates as are received by it to the collector of internal revenue for its district on or before the 20th day of the month next succeeding that in which the said certificates were received.]^o special form of certificate has been issued for presentation with coupons detached from bonds of exempt organizations, but certificates in the usual form, claiming or not claiming exemption, may be used. (T. D. 1967.)

Where such organizations have an issue of registered bonds, they should, before sending out checks issued in payment of registered interest, stamp or write across the face of such check, "Corporation exempt under paragraph G from withholding;" otherwise the first bank or collecting agent would deduct and withhold the normal tax therefrom.

Exempt organizations, salaries paid by. Salaries paid by corporations, which corporations have been held to be exempt from the income tax under paragraph G of the income-tax law, are subject to the income tax and should be returned as income by the individual, but the corporation is not required to withhold the tax.

Exemption and deductions allowed in the return of a decedent. See Executors and administrators.

Exemption, husband and wife. See Husband and wife.

Exemption on income received from partnerships. See Partnerships, identity of income.

Expense. Taxes paid by a tenant to a landlord are considered as additional payment for rent and are deductible as an expense of carrying on business.

Failure to render a return, penalty for. Every person having a net income of \$3,000 or more for the calendar year is required to render a return, and the penalty provided by law for refusal or neglect to file a return will be enforced regardless of the fact that the net income may be less than the exemption to which the individual is entitled.

Farm buildings, depreciation of. Depreciation of farm buildings, other than a dwelling occupied by the owner, actually

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sustained within the year, in excess of repairs made, will be

considered an allowable deduction.

Fiduciary. "Fiduciary" is a term which applies to all persons or corporations that occupy positions of peculiar confidence toward others, such as trustees, executors, or administrators; and a fiduciary, for income-tax purposes, is any person or corporation that holds in trust an estate of another person or persons.

There may be a fiduciary relationship between an agent and a principal ; but the word "agent" does not denote a "fiduciary" within the meaning of the income-tax law.

Fiduciary, return of. Fiduciaries are required to make a return on Form 1041, revised, whenever the interest of any one beneficiary in the income from the estate or trust subject to the normal tax is in excess of \$3,000. This duty can not be delegated to another person. When the interest of any one beneficiary exceeds \$3,000 and a return is required, the name and full address of each beneficiary and the share of income to which entitled, even though it be less than \$3,000, must be shown; and in all cases where the beneficiary's interest is in excess of \$3,000 the fiduciary is required to withhold the normal tax unless exemption is claimed under paragraph C, and then only on the amount in excess of the exemption so claimed.

A fiduciary acting for a beneficiary in more than one estate or trust is required to account for each estate separately, and if the amount of income from no one estate exceeds \$3,000, no return or withholding will be required. Unless the beneficiary is under some disability which requires the fiduciary to act, the beneficiary will make his own return and account for the tax upon his entire net income.

A fiduciary acting for a minor or insane person having a net income in excess of \$3,000 will make the return for his ward on Form 1040, revised, and will not be required to file a return on Form 1041, revised, unless he has more than one ward by reason of the same estate or trust. Then, in that event, a return will be required on Form 1041, revised, and a separate return on Form 1040 for each ward having a net income of \$3,000 or more for the calendar year.

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Dividends in the hands of a fiduciary and belonging to a beneficiary are not subject to the normal tax, but will be subject to the additional tax to the beneficiary whenever the beneficiary's income from all taxable sources is in excess of \$20,000. (T. D. 1943.)

Fire-insurance policy, premiums paid on. See Insurance premium.

Foreign corporations, interest on bonds of. See Income

derived from coupons, checks, etc.

Foreign corporations, property owned and business transacted wholly within the United States. Dividends declared and paid by a foreign corporation which derives its entire income from business done wholly within the United States and pays, under the provisions of the Federal income-tax law, a tax upon its net income, should be treated in the same manner as dividends from domestic corporations.

Foreign employees of domestic corporations. Salary received by a foreign employee of a domestic corporation for services rendered entirely in a foreign land is not subject to deduction and withholding of the normal tax at source.

Foreign mortgages, income from. See Income derived from coupons, checks, etc.

Foreign service pay. See Pay.

Gift, property acquired by. The value of property acquired by gift is not subject to income tax, but all gains, profits, or income derived therefrom are subject to tax, and if the property so acquired is subsequently sold at a price greater than the appraised value at the time the property was acquired by gift, the gain in value is held to be income and subject to tax under the provisions of the Federal income-tax law.

Gifts. See Voluntary offering.

Gratuity. Where the monthly salary of an officer or employee is paid for a limited period after his death to his widow in recognition of the services rendered by her husband, no services being rendered by the widow, it is held that such payment is a gratuity and exempt from taxation under the income-tax law. Such a payment would not, however, be an allowable

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deduction as an expense of carrying on business in the return of the person, firm, or corporation paying same.

Guardian, return of. See Fiduciary, return of.

Heat and light. Amounts received by or paid for an officer for heat and light shall be returned as income.

This includes the money equivalent, as fixed by the Government, of heat and light furnished to an officer occupying public

quarters. (T. D. 2079.)

Heat and light, commutation of. See Commutation of heat and light.

Husband and wife. Where either dies during the year, having a net taxable income of \$3,000 or more, a return of income should be made by the executor or administrator of the deceased as of the date of his death, and the executor or administrator may claim an exemption of \$4,000 under paragraph C. The survivor when making a return at the end of the year for the entire year will be allowed the applicable exemption for the single or married status existing at the close of the year.

Husband and wife, additional tax computed on separate income of. The regulations of the department requiring the incomes of husband and wife to be combined and authorizing the aggregate exemption of \$4,000 from such combined income are applicable for the purpose of the normal tax only. The additional, or surtax, imposed by the act will be computed on the basis of the separate income of each individual; that is, on the amount of each individual's income in excess of the minimum amounts upon which the surtax at the graduated rates is to be calculated.

Income derived from coupons, checks, or bills of exchange on foreign bonds, mortgages, dividends, etc. Amounts received by citizens or residents of the United States for or in payment of interest upon bonds issued in foreign countries, and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are subject to the income tax. (Art. 54, regulations No. 33.)

The licensed person, firm, or corporation first receiving such

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foreign item for collection, or otherwise, shall withhold therefrom the normal tax of 1 per cent and will be held responsible therefor unless exemption is claimed.

If the foreign item is in the form of a check or bill of exchange, the word "Income tax withheld by " (giving

name, address, and date), or the words, "Income-tax exemption claimed through - " (giving name and address of licensee), as the case may be, shall be indorsed or stamped thereon by such licensee; but if the item is represented by a coupon or coupons from bonds, the licensee shall attach thereto a statement identifying the same, and the indorsement or stamp showing the tax withheld, or exemption claimed, shall be placed on the statement instead of the coupon or coupons.

Such indorsement or stamp shall be sufficient evidence of tax withheld, or exemption claimed, to relieve subsequent holders or purchasers, from the obligations of withholding. (T. D. 2023, arts. 60-61, regulations 33.)

Claims for exemption from withholding on income other than from interest on bonds may be made by individuals or [on] Form 1007 ; by firms, organizations, or fiduciaries on Form 1063; claims for exemption from withholding on interest from bonds may be made by individuals on Form 1000B; by firms and organizations on Form 1001 ; and by fiduciaries on Form 1015. (T. D. 1998.)

Insurance premium. Premiums paid for insurance on property which is not occupied by the owner as a dwelling, hut is rented or leased to secure an income, constitute allowable deductions in computing net income.

Premiums paid on life insurance by the insured do not constitute allowable deductions under the income-tax law.

Premiums paid on life insurance taken out by a partnership upon the lives of individual members of such partnership constitute allowable deductions in ascertaining the net earnings of the partnership. However, when such policies mature, or upon the death of the insured partner, the amount received as life insurance should be included in the gross income of the partnership.

Investment certificates. Investment securities issued by

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a corporation for a term of years are corporate obligations within the meaning of the income-tax law.

Judges, salary of. The salary of judges of the Supreme ^nd inferior courts of the United States appointed subsequent to October 3, 1913, and of judges who have been retired is subject to the income tax and to the withholding provisions of the income-tax law.

Landlord. A landlord in receipt of annual rental from a tenant in excess of \$3,000 may, at the time the amount of rental payments aggregates \$3,000, file with the tenant a claim for exemption under paragraph C of the income-tax law (Form

1007, revised). He may, also, after December 31 of the taxable year, file with the tenant, or with the collector of internal revenue, a claim for deductions under paragraph B on Form

1008, revised.

For duties of tenant with reference to withholding, see Tenant. (T. D. 1965.)

Legacy. The general policy of the law and rule of interpretation require that legacies in all cases, unless clearly inconsistent with the intention of the testator, should be held to be vested rather than contingent. Where there is a vested interest the income from such interest, whether distributed or not, is subject to the tax ; and when in the hands of fiduciaries they are required to account for and pay the tax thereon.

Life insurance policy, premiums paid on. See Insurance premium.

Living quarters furnished. See Compensation, value of quarters furnished part of.

Local benefits, taxes assessed against. Taxes paid pursuant to assessments levied by special districts, such as irrigation, reclamation, drainage districts, etc., for sidewalks in cities, street extension, grading, paving, etc., are held to be ^'taxes assessed against local benefits." Such taxes are not allowable deductions in a return of annual net income.

Losses in trade. "Only those losses are deductible which are sustained during the tax year 'in trade.' Loss to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment, but must be an actual

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loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be incurred in trade and be determined and ascertained upon an actual, a completed, a closed transaction."

The term "in trade," as used in the law and in Treasury Decision 2005, is held to mean the trade or trades in which the person making the return is engaged; that is, in which he has invested money otherwise than for the purpose of being employed in isolated transactions, and to which he devotes at least a part of his time and attention. A person may engage in more than one trade and may deduct losses incurred in all of them, provided, that in each trade the above requirements are met. As to losses on stocks, grain, cotton, etc., if these are incurred by a person engaged in trade to which the buying or selling of stocks, etc., are incident as a part of the business, as by a member of a stock, grain, or cotton exchange, such losses may be deducted. A person can be engaged in more than one business, but it must be clearly shown in such cases that he is actually a dealer, or trader, or manufacturer, or whatever the occupation may be, and is actually engaged in one or more lines of recognized businesses before losses can be claimed with respect to either or more than one line of business, and his status as such dealer must be clearly established. (T. D. 2005.)

Mileage. The difference between the amount received as

mileage and the amount of actual necessary expenses incurred on a- journey shall be returned as income. Payments on account of mileage are not subject to withholding. (T. D. 2079.)

Minor child, return of. See Guardian, natural.

Mortgage, property purchased subject to. An individual issues coupon bonds secured by a mortgage upon real estate. Subsequently a corporation purchases the real estate and assumes (as between the mortgagor and itself) the payment of bonds and coupons. Held: That the situation is not changed by the purchase by the corporation. The corporation purchased only the mortgagor's equity of redemption (and the mortgagor's possession) ; the property is the security, and the character of the bond obligation remains unchanged and as created, even though the corporation is to pay all interest and

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will ultimately pay off the mortgage. There will be no withholding by the corporation (it being placed in the stead of the mortgagor) until the interest payment to any one person in any year exceeds \$3,000. (See Public utility.)

Municipality, obligation of. See Public utility and Mortgage, property purchased subject to.

Naval officers. See Oaths.

Non-resident alien, agent of. The responsible heads, agents, or representatives of non-resident aliens who are in charge of the property owned or business carried on within the United States by non-resident aliens shall make full and complete returns of the income therefrom on Form 1040 revised, and shall pay any and all tax, normal and additional, assessed upon the said income of such non-resident aliens. (T. D. 2013.)

Notary public. See Oaths.

Oaths. (1) A return of income rendered by an individual residing abroad may be acknowledged before any duly appointed officer of the country in which he resides, authorized to administer oaths and use an official seal.

(2) If a return is executed in a State before a notary who is not required by the laws of the State to use a seal, and none is used, the notary should file with the Commissioner of Internal Revenue the certificate of an officer possessing a seal, showing that he is duly commissioned and authorized to administer oaths ; otherwise the certificate will not be recognized.

(3) Returns acknowledged before commanding officers of naval vessels while at sea, or in foreign ports, will be accepted.

(4) Returns executed before a summary court officer, United States Army, will not be accepted.

Ownership certificates. Ownership certificates should be filed with coupons of exempt organizations when presented for collection. (See Exempt organizations.)

Partnership — identity of income. The character of partnership profits divisible between persons has no reference to any character which, as income accruing to the partnership, it may have borne prior to receipt by the partnership. It is therefore held that income received from a partnership can not be traced

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to its source behind the partnership for the purpose of claiming individual exemption.

Income when accrued. It is held that the income from a partnership accrues to the individual partner at the time his distributive interest is determined and reducible to possession. In the returns of income made by individuals for the calendar year, therefore, there should be included such income accruing from the business of partnerships for their business years as may have been definitely ascertained by means of a book balance, whether distributed or not. In other words, members of partnerships are required to make returns of income like other individuals for the calendar year, and should include in their returns the net proceeds of their interest in partnership profits ascertained at the end of the business year falling within the calendar year for which the individual return is being rendered.

Pay. Congress has clearly specified the conditions under which officers and enlisted men are entitled to foreign service pay, aids' pay, and pay for certificate of merit, and such items of income are considered as fixed and determinable and subject to the withholding provisions of the income-tax law.

Penalty for failure to render a return. See Failure to render a return, penalty for.

Pension, foreign. License not required for collection of foreign pensions paid to resident aliens or citizens of the United States.

Pensions. Pensions paid by the United States Government are subject to the income tax.

Per diem allowances in lieu of subsistence while traveling under orders. The difference between the amount received as a per diem allowance and the amount of actual necessary expenses incurred on a journey shall be returned as income and is not subject to withholding. (T. D. 2079.)

Power of attorney, fiduciary relation can not be created by. A person can not, by a power of attorney, delegate to another a duty which he himself could not perform, and inasmuch as an individual can not relieve a withholding agent from the withholding requirements of the income-tax law by filing

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Form 1015, a person holding a power of attorney from another is without authority to file this certificate as a fiduciary. However, for income-tax purposes he is authorized to file any certificate which his principal, as such, would be entitled to file.

Premium on bond. See Bond, premium on.

Principal place of business of corporations. See Corporations, principal place of business of.

Profit from sale of real estate. Profit is the difference between the selling price and the cost where the selling price is more than the cost.

"Cost of property purchased prior to the incidence of the special excise tax (Jan. 1, 1909), or the incidence of the income tax (Mar. 1, 1913), will be the actual price paid for the property, including the expense incident to the procurement of the property in the first instance and its sale thereafter, together with carrying charges of interest actually paid, insurance, and taxes actually paid prior to the incidence (special assessments, if any, 'actually paid' as 'local benefits' in connection with real estate) ; provided that where, up to the incidence of the tax, the expense of carrying property has exceeded the income from it, the difference between the expense of carrying and the income from the property shall be added to the purchase price, and the sum thus ascertained shall be the cost of the property; and provided further, that in the case of property purchased prior to the incidence of the tax and sale thereof subsequent to the incidence of the tax, there shall be excluded from consideration in ascertaining cost of any items of income, expense, interest and taxes previously taken into account in preparing a return of annual net income.

"The cost of property acquired subsequent to the incidence of the tax will be the actual price paid for it, together with the expense incident to the procurement of the property in the first instance, and its sale thereafter, and the cost of improvement or betterment, if any."

The entire profits realized by individuals or corporations from the sale of real estate will be taxable except where the property in connection with which the profit is obtained was Foster Income Tax. - 93.

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acquired prior to March 1, 1913, in the case of individuals, or prior to January 1, 1909, in the case of corporations; and then and in such event the profit will be prorated over the whole time the property was held, and that part of the whole profit apportioned to the taxable period will be reported in annual returns of income. In prorating, fractional parts of years will not be considered.

For income-tax purposes, where there is an actual sale and transfer, profit will be considered as realized even though payment is to be made in installments, as notes for deferred payments are secured by the title to the property, and presumably bear interest and are held to be worth, in cash, their face value.

In case of default on installment payments there may be charged off as bad debts the amount of such unpaid installments less the salvage value of the real estate repossessed. (T. D. 2005.)

Profit sharing. See Compensation.

Promissory note of corporations. A simple promissory note not exceeding one year in time is not "similar to bonds, mortgages, or deeds of trust of corporations," and the interest on such a note is not subject to withholding except when the amount of interest thereon, payable to an individual in any one year, is in excess of \$3,000 or when the interest thereon is payable to a non-resident alien, in which latter case the tax should be withheld regardless of the amount of interest payment.

Public utility. Where a municipality purchases a public utility subject to a mortgage, the mortgage retains its original character, even though the municipality assumes the mortgage indebtedness and pays the interest thereon. Therefore, the indebtedness secured by such mortgage is not an obligation of the municipality within the meaning of Paragraph B of the income-tax law. (See Mortgage, property purchased subject to.)

Quarters. Commutation of quarters and the money equivalent of quarters furnished in kind shall be returned as income.

When quarters are furnished in kind of a less number of rooms than the number allowed by law, the money equivalent only of the number of rooms actually assigned shall be returned

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as income. When quarters are furnished in kind of a greater number of rooms than the number allowed by law, it is to be assumed that the excess number is assigned for the convenience of the Government, and the money equivalent only of the number of rooms allowed by law shall be returned as income. (T. D. 2079.)

Quarters, commutation of. See Commutation of quarters.

Real estate agent. Real estate agents are not required to deduct and withhold the normal tax from rents collected, even though the amount is in excess of \$3,000. The agent stands in the place of the landlord and receives money from tenants in exactly the same capacity as the landlord would receive such moneys and should be treated as such. A real estate agent does not act as an agent of the debtor. Therefore the duty of withholding the tax can not be transferred from the debtor to such agent, because such transfer would simply be transferring the duty of withholding to the landlord himself.

Real estate, profit from sale of. See Profit from sale of real estate.

Reimbursement for actual expenses. Amounts paid by the Government in the nature of reimbursement for subsistence and other items of actual expense incurred while absent on business for the Government, are not required to be returned as income. (T. D. 2079.)

Renewal premium. Commissions on renewal premiums for insurance are income when received and income for the period in which received.

Rent. Where a tenant rents two pieces of property from the same owner, the tenant should combine the payments, and when such payments so combined aggregate in excess of \$3,000 the normal tax should be deducted and withheld, subject to authorized exemptions claimed.

Where a board of education for a school district rents property at an annual rental exceeding \$3,000, such board of education is regarded as a tenant and should withhold the normal tax, subject, however, to the exemption claimed.

A lessee paying rent in excess of \$3,000 a year under a lease from two or more individuals must make deduction from all

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payments to individuals in excess of \$3,000 unless certificates of exemption are filed. He should ascertain in what proportion the rent is divided by the use of office [revised] Form 1000B, vifhich may be adapted and executed by one of the

parties in interest, the others executing Form 1007. The withholding should be made from the income of individuals and not from the aggregate amount paid. This situation is not different if the lessors are husband and wife if their individual interests are separate. The situation is not changed if, by instruction, the actual payments of rent are made to one lessor, the payments to be distributed by him. Where notes are given in payment of rent, the lessee's obligation to withhold is not altered. The lessee's obligation is the same as in the case of cash rental, withholding occurring at the time the notes are given, and not at maturity. When rental payments in excess of \$3,000 a year are payable to a fiduciary, who fails or refuses to file Form 1063, agreeing to act as the source, the beneficiaries are not entitled to file exemption certificates directly, the lease having been taken from the fiduciary. If the fiduciary's certificate is not filed, the lessee should withhold 1 per cent on the entire amount. The lessee is not presumed to have knowledge of the beneficiaries unless they are parties to the lease.

Rent. See Living quarters.

Return of fiduciary or guardian. See Fiduciary, return of.

Returns, execution of. See Oaths.

Salaries, withholding on, based on calendar year. The salary of an individual is subject to withholding at the source only on the basis of the calendar year. Corporations which have a fiscal year other than the calendar year and pay employees salaries of \$3,000 or over per annum, will be required to withhold on the basis of the calendar year.

Salary of judges. See Judges, salary of.

Salary paid in advance. See Compensation.

Salary paid to widow for a limited time after death of employee. See Gratuity.

Scrip. Scrip certificates issued by a corporation to its stockholders in lieu of dividends, such scrip certificates bearing

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interest payable semi-annually and redeemable at a specified time not longer than one year from date of issue, are not corporate obligations similar to bonds, mortgages, or deeds of trust, and the interest payable thereon will not be subject to withholding except when the amount thereof payable to an individual in a calendar year exceeds \$3,000. Payment in scrip is held to be equivalent to payment in cash, and when the amount of such scrip payment to any one individual in a calendar year is in excess of \$3,000 the tax must be withheld and accounted for in excess of exemption claimed.

Special assessment districts. Special assessment districts created under the laws of the several States for public purposes, such as the improvement of streets and public highways, the provision for sewerage, gas, and light, and the reclamation, drainage, or irrigation of bodies of land, and levee and school districts, are held to be political subdivisions of a State, and income derived from interest upon the obligations of such districts shall not be included in computing net income. (T. D. 1946.)

Taxes paid pursuant to assessments levied by such special assessment districts are held to be "taxes against local benefits," and are, therefore, not allowable deductions in computing net income.

Stock dividends. Stock dividends when required to be included in a return of income should be accounted for at the valuation placed upon the stock by the corporation when said stock dividends were issued.

Summary court officers. See Oaths.

Taxes. Taxes paid by citizens or resident aliens of the United States to a foreign country are not allowable deductions in computing net income. The provision of law for the deduction of taxes applies only to taxes paid to the United States, or to some State or political subdivision thereof in the United States.

Taxes, special. See Special assessment districts.

Tax-free covenant clause. See Bonds containing tax-free covenant clause.

Tenant. See Kent.

Theatrical profession. See Actors and actresses.

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Voluntary offering. Easter offerings, and fees received by clergymen for funerals, masses, marriages, baptisms, etc., are considered income subject to tax under the provisions of the income-tax law of October 3, 1913. Christmas gifts, however, are not considered income within the meaning of the law and should not be included in a return.

Withholding from rents. See Eent.

Worthless debt. See Debt.

PART II.

Rulings in Relation to Corporation Income Tax.

Agricultural and Horticultural Associations,

Agricultural and horticultural associations specifically enumerated as exempt are held to be such associations as county fairs, or like organizations, not themselves engaged in agricultural or horticultural pursuits, but which, by means of awards, premiums, etc., are intended to encourage better production and no part of whose income inures to the benefit of any private stockholder or individual. (T. D. 1737.) [Corporation Excise Tax - T. D. issued December 5, 1911.]

Corporations engaged in agricultural or horticultural pursuits for profit are liable under the law to make returns and to pay the income tax thereby shown to be due.

Agricultural organizations. Corporations owning sugar or other plantations and disposing of the products thereof are held to be operating for profit and are not entitled to exemption as agricultural organizations.

Bank guaranty fund. The reserve required to be set aside by banks in various States and kept and maintained in said States as a guaranty of depositors in the banks of said States - which said guaranty fund is subject to draft by said banking commissions or boards, in amounts to be determined by said State banking commissions or boards, only for the purpose of supplying deficiencies in estates of failed or insolvent banks - is not an expenditure and can not be considered either as a tax or an expense. It is a reserve required to be kept and main-

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tained for a certain and specifically designated purpose. The amounts actually expended from such fund in paying therefrom drafts of the State banking commissions or boards on said fund are in the nature of insurance cost, and as such may be deducted as a business expense. The reserve, per se, is not deductible in a return of income.

Capital of a corporation. The amount received by a corporation for the original issue and sale of its capital stock is held to be the capital of the corporation. In cases where the stock, as originally issued, is sold at a price greater or less than the par value, neither the premium nor the discount will be taken into account in determining the net income of the corporation for the year in which the stock is sold. This is purely a capital transaction and the income is neither increased nor decreased by reason of the sale, per se, of the stock at a price greater or less than its par value.

Collateral the subject of sale in ordinary course of business of a corporation (expense of business). As used in the act, the expression "collateral the subject of sale," etc., refers to physical or tangible property bound for the performance of certain covenants or payment of certain obligations,

and which physical or tangible property is the "subject of sale in the ordinary business of a corporation" owning the same. Where such corporation is, as a matter of its ordinary business, engaged in buying and selling, or dealing in such property, the interest actually paid within the year on indebtedness wholly secured by such collateral may be allowably deducted from gross income as an expense of doing business, without regard to the limit of deductible interest as otherwise provided by the statute. The corporation, etc., must be organized and operated for the purpose of buying, selling, and dealing in the particular kind of property which becomes the collateral in question, and the particular property pledged for the debt upon which the interest is paid must be the "subject of sale in the ordinary business of the corporation." Real estate mortgaged, and the property of corporations organized for and engaged in the business of buying, selling, and dealing in real estate ; warehouse receipts representing property the subject of sale in the ordinary busi-

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ness of the corporation owning the same, and which warehouse receipts are pledged as collateral for such corporation's own debt, are examples where the interest paid will be deductible as a "business expense" and not be subject to the statutory limitation as to interest deduction. (See T. D. 1993.)

Corporation - Exempt. Cooperative dairies are not. (T. D. 1996.)

Corporations in existence but part of year. All corporations having an existence as such during all or any portion of a year, unless coming within the classes specifically enumerated as exempt, are required to make returns. Dissolved corporations whose fiscal year coincides with the calendar year will make returns covering the period from January 1 to the date of dissolution, and corporations having a fiscal year other than the calendar year will make returns covering the period from the beginning of the fiscal year to the date of dissolution ; and new corporations will make return for the period from the date of their organization to December 31. The net income in all such cases will be ascertained in the manner set out in Paragraph G of the act.

Donations. Donations by corporations which legitimately represent a consideration for a benefit flowing directly or indirectly to the corporation as an incident of its business are allowable deductions from gross income in ascertaining net income subject to the income tax, as donations to a hospital upon consideration that employees of the corporation are to have a ward for their use in case of accident or illness. The absence of consideration moving in some form to the corporation will make a contribution a mere gratuity. Gratuities are now allowable deductions in a return of income by corporations.

Donations made for purposes connected with the operation

of the property^ when limited to charitable institutions, hospitals, or educational institutions conducted for the benefit of the employees of a corporation or their dependents, shall be proper as a deduction under the head of expense in the return of the corporation.

Earnings or dividends not deductible. Every corporation, no matter how closely related it may be to any other corpora-

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tion, IS required to make return of annual net income and to pay any income tax thereby shown to be due.

Parent, holding, or other corporations must include in their gross income, and can not deduct therefrom, any dividends or share of earnings which they may receive from a subsidiary, related, or any other corporation. The fact that the parent or holding company owns all the stock of the subsidiary company is immaterial and will not warrant such parent company in omitting or deducting dividends from gross income.

The Federal income-tax law fixes a specific rule by which the net income, for the purposes of the tax, is to be computed. That rule makes no provision for the exclusion or deduction from the taxable income of dividends received.

Expense (spending or treating money.) So-called spending or treating money actually advanced by corporations to their traveling salesmen as a part of selling expense of the product of such corporations is an allowable deduction in a return of income by such corporation. There must be some showing that all the allowance claimed as a deduction was actually expended for the purpose for which the allowance was made, namely, the selling of the product of the corporation in question.

Fiscal year (corporation). The financial year of a corporation, etc. at the end of which the accounts are balanced. - For income-tax purposes, in the absence of designation otherwise, all returns are required to be made on the basis of the calendar year. The privilege of making a return of income on the basis of a fiscal year other than the calendar year is limited to corporations or institutions which make returns and pay tax as corporations. The statute provides that returns must be made on the basis of a calendar year unless the corporation, etc., involved shall designate a fiscal year, other than the calendar year, in the manner provided by the statute. When the calendar year shall have passed, a return of income for the entire period of such calendar year is then due and must be made out and filed with the proper collector of internal revenue on or before March 1 then next following. This is true even of corporations and institutions making return as corporations,

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except that such corporations, etc., are given the privilege of filing with the collector of internal revenue (with whom their return must be filed) not less than 30 days (more, but not less) prior to March 1 (the date when the return on the basis of a calendar year is to be filed), a notice, in writing, setting forth that such corporation, etc., has designated the last day of some month in the year (other than the last day of December) as the day of the closing of its fiscal year, and that from the date so designated as the close of its fiscal year its books have been or will be kept on the basis of such designated fiscal year. When this said notice is filed with the collector of internal revenue, a return must then be made on or before March 1 for such part of the calendar year elapsed as is not included in the said designated fiscal year, and return for the full designated fiscal year must be made and filed within 60 days next succeeding the last day of said designated fiscal year. This rule will apply whether the designation affects the future or past, provided always that the return of income can not cover more than 12 consecutive months.

Example :

1914 1915

A X B C Y Z

Jan. 1 June 30 Dec. 31 Mar. 1 June 30 Aug. 29

AB is calendar year and C is March 1, the time when return on the basis of the calendar year must be filed. At any time not less than thirty days prior to C a corporation may file with the collector with whom its return of income must be filed a notice in writing setting forth that said corporation, etc., has designated the last day of some month in the year (other than December 31) as the day of the close of its fiscal year, as June 30, represented by X; thereafter, on March 1, a return will be filed for the period AX. XY represents the first designated fiscal year, and for this said fiscal year a return of income must be made (covering the period XY) subsequent to June 30 and on or before August 29 ; in other words, the sixty-day period next following the close of the fiscal year. Thereafter returns

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of income will be made and filed annually subsequent to June 30, and on or before August 29. (See T. D. 2001.)

Gifts to corporation - Income. The value or amount of a gift to a corporation is held to be income to such corporation and should be returned as such for the year in which the gift is received. The provision of the act of October 3, 1913, which exempts gifts, bequests, etc., from the tax imposed by the act applies to individuals and not to corporations.

Horticultural societies. Fruit-growers' associations whose purpose is to promote the mutual benefit of their members in marketing their products and which are not organized for profit and have no capital stock represented by shares, and whose income is derived wholly from membership fees, dues, and assessments to meet necessary expenses are horticultural societies within the meaning of the law and are not subject to tax or required to make returns.

Interest. Individuals are permitted a deduction of "all interest paid within the year * * * on indebtedness ;" corporations are permitted a deduction of interest paid within the year on an amount measured by "the amount of capital stock, or capital employed, plus one-half the interest-bearing debt," both outstanding at the close of the year.

A foreign corporation in determining the maximum principal upon which interest for the purpose of a deduction may be computed will add to the amount of its paid-up capital stock, or if no capital stock, then the amount of capital employed in business, one-half the interest-bearing indebtedness, both outstanding at the close of the year. Such proportion of this sum as the gross income derived from business transacted in this country bears to the gross income received from business done or capital invested, both within and without the United States, will constitute the maximum principal upon which interest for the purpose of a deduction from the income in the United States may be computed. For instance, if the gross income in the United States is one-fourth of the entire gross income, then one-fourth of the sum of the paid-up capital stock plus one-half the interest-bearing indebtedness will be the maximum

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principal upon which interest deductible from the United States income may be computed.

Life insurance in favor of corporations. In cases wherein, corporations pay premiums on insurance policies insuring, in favor of the corporations, the lives of officers or others, such premiums may be allowably deducted from the gross income of the corporations paying the same.

In all such cases the proceeds of the policies when paid at maturity or upon death of the insured shall be returned by the corporation as income for the year in which such proceeds were received.

Paid-up capital stock outstanding at close of year.
"Paid-up capital stock outstanding at the close of the year," when used in connection with "interest-bearing indebtedness," to determine the maximum principal upon which interest for the purpose of an authorized deduction is to be computed, means the par value of shares issued as reported in Item 1 of

the return form, and will not include the surplus carried by the corporation. (See T. D. 1960 for method of computation, and T. D. 1993 for regulation as to deduction of interest paid on indebtedness wholly secured by collateral, the subject of sale, in the ordinary course of business.)

Pensions paid employees, etc. Amounts paid for pensions to retired employees or to their families or others dependent upon them, or on account of injuries received by employees, are proper deductions as ordinary and necessary expenses. Gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income of the corporation.

Philippine and Porto Rican corporations. Such corporations organized under laws of the United States or any State thereof, resident in the United States but doing business in these possessions, are taxable in the United States. If they are organized under the laws of the United States or local laws of these possessions and resident in said possessions, they are required to pay their tax in the Philippines or in Porto Rico, as the case may be. The law provides that corporations shall make their returns "to the collector of internal revenue for the

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district in which they have their principal place of business." Held: "Principal place of business" of a corporation is the place of office in which are kept the books of account and other data from which the return is to be prepared.

Public utility (business expense) . In case of a public utility constructed, operated, or maintained under contract with any city, [State] Territory, or the District of Columbia, or a city where a portion of the net earnings of such public utility is payable under such contract to the State, Territory, etc., the amount so paid may be deducted by the public utility operating under such contract as an "expense of business." (See Art. 93, Reg. 33.)

Rent. Payments measured by a fixed percentage on the stock of a railroad corporation whose lines are leased by another railroad corporation and which rent is payable by the lessee directly to the stockholders of the lessor corporation, have, under the income tax law with respect to the corporation paying such sums, the status of a rental payment.

In such cases there are two corporations involved, the lessor and the lessee — one the rent payer and the other the rent re-

ceiver. To the lessee rental payments are an expense of operation ; to the lessor the rentals are an income.

A contract which provides that the rentals shall be paid to a third party, not a party to the contract, does not change the character of the payment, nor relieve the lessor from liability to tax on the rental income which the lessee pays to it or to such third party. The income of the third party, the stockholder, is dividends on the stock which he holds in the lessor company. Dividends can not be paid unless the lessor has an income out of which to pay them. Hence the lessor company is required under the law to return as income the rentals which the lessee is required to pay. In paying direct to the stockholders the lessee is acting as the agent of the lessor, and the amounts received by stockholders are, in effect and in fact, dividends received out of the earnings of the lessor.

Return (corporation) . A corporation organized and transacting no business within the calendar year of its organization must, nevertheless, make and file a return on the basis

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of the calendar year unless such corporation shall designate a fiscal year other than the calendar year in the manner and form as provided for that purpose. The duty to make a return depends upon corporate or associational existence and not upon the receipt of income.

Return period. The return for a completed period must be made independently of any other period. A corporation changing from the basis of a calendar year to a fiscal year, and because of said change having a part of the calendar year, for which return is to be made, will be required to make a separate return for the fraction of the calendar year, and another separate return for the entire fiscal year; as June 30 being designated as the end of the fiscal year, the part of the calendar year from January 1 to June 30 must be covered in a return to be made on or before March 1, then following, and on or before 60 days next following June 30 (next after the filing of return for the fractional part of a calendar year) a return must be made and filed for the entire fiscal year of the corporation. (T. D. 2029.)

W. H. OSBOEN,

Commissioner of Internal Revenue.

Approved :

W. G. McAdoo,

Secretary of the Treasury.

[Comment: Released for publication December 18, 1914.]

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(T. D. 2109.)

Income tax.

Non-Resident Aliens - Amendment of Article 8 of Regulations

33, providing for the collection of tax on income of

non-resident aliens.

Treasury Department,
Office of Commissioner of Internal Revenue,
Washington, D. C, December 28, 1914.

To collectors of internal revenue:

Treasury Decision 2013 [page 294] of August 12, 1914,
amending Article 8, Income Tax Regulations No. 33, is amended to make Article 8 read as follows, the words in italics constituting the further amendments :

Art. 8. The income of non-resident aliens subject to the normal tax of 1 per cent shall consist of the total gains, profits, and income derived from all property owned and from every business, trade or profession carried on within the United States (to be designated as gross income), less deductions (1 to 8, inclusive) specifically enumerated in paragraph B of the Act (see Art. 6), in so far as said deductions relate to said gains, profits, etc.

The specific exemption in paragraph of the Act can not be allowed as a deduction in computing the normal tax of non-resident aliens.

Non-resident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States.

The responsible heads, agents, or representatives of said non-resident aliens who are in charge of the property owned or business carried on shall make full and complete return of the income therefrom on Form 1040 and shall pay any and all tax, normal and additional, assessed upon the said income of such non-resident aliens.

The person, firm, company, copartnership, corporation, joint-stock company or association, and insurance company,

in the United States, citizen or resident alien, in whatever

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capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income, of ■whatever kind, to a non-resident alien, under any contract or otherwise, which payment shall represent income of a non-resident alien from the exercise of any trade or profession within the United States, shall deduct and withhold from such annual gains, ■profits, and income, regardless of amount, and joy to the officer of the United States Government authorized to receive the same, such tax as will be sufficient to pay the normal tax of one per cent imposed thereon by law; and shall make an annual return on Form 1042.

Form 1008, Revised, claiming the benefit of deductions and refund of excess tax withheld, as provided by paragraphs B and E of the Federal Income Tax Law may be filed by the non-resident alien with the withholding agent or Collector of Internal Revenue for the district in which the return is wMde or is to be made.

W. H. OSBOEN,

Commissioner of Internal Revenue.

Approved :

Wm. p. Malbtjeit,
Acting Secretary of the Treasury.

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PREPARED BY EMMA FREAM.

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