

AMENDMENTS TO THE INTERNAL REVENUE CODE

FEBRUARY 27 (legislative day, FEBRUARY 13), 1941.—Ordered to be printed

Mr. HARRISON, from the Committee on Finance, submitted the following

REPORT

[To accompany H. J. Res. 60]

The Committee on Finance, to whom was referred the joint resolution (H. J. Res. 60) to amend the Internal Revenue Code, having had the same under consideration, report favorably thereon without amendment and recommend that the joint resolution do pass.

The provisions of the joint resolution are fully explained in the report of the Committee on Ways and Means, which is appended to, and made a part of, this report.

H. Rept. No. 54, 77th Cong., 1st sess.]

The Committee on Ways and Means, to whom was referred the joint resolution (H. J. Res. 60) to amend the Internal Revenue Code, having had the same under consideration, report favorably thereon without amendment and recommend that the joint resolution do pass.

GENERAL STATEMENT

The amendments proposed are intended merely to perfect the codification of the related provisions of basic law and are to have effect, under section 2 of the resolution, as of the date of the enactment of the Internal Revenue Code. They serve the original intent of the Congress that no substantive change of law should result from the process of codification.

They embody the results of the continued examination and use of the Internal Revenue Code since its enactment. The collaboration and approval of the Treasury Department are indicated by the following letter:

JANUARY 10, 1941.

Hon. ROBERT L. DOUGHTON,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: There is enclosed herewith a joint resolution, prepared by the staff of the Joint Committee on Internal Revenue Taxation and the Treasury Department, to amend the Internal Revenue Code. The proposed amendments are clerical in nature, and are intended to correct certain technical errors which occurred in the complicated process of codifying the internal revenue laws. No substantive changes in the basic statutes incorporated in the internal Revenue Code are made by the proposed amendments. The amendments when enacted would take effect as of the date of enactment of the Internal Revenue Code.

It seems desirable that the joint resolution be adopted at the earliest opportune time in order that both taxpayers and the Federal Government will not be harmed by the errors that occurred in the codification of the internal revenue laws.

Sincerely,

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

DETAILED STATEMENT

There follows an explanation of each of the amendments proposed.

AMENDMENT TO SECTION 27 (C)

This amendment repairs an omission from the final sentence of section 27 (c) of the Revenue Act of 1938, as codified.

The subsection provides for the computation of the dividend carry-over, one of the components of the corporation dividends paid credit. While the dividend carry-over is "from the two preceding taxable years," it is affected under the Revenue Act of 1938, and should be affected under the code, by the excess, if any, of the basic surtax credit for the third preceding taxable year over the adjusted net income for that year. For the purposes of section 27 (c) of the Revenue Act of 1938, the earliest "third preceding taxable year" began in 1936, by specific provision of section 27 (c) (1) (B). Since the first taxable year under the code, for income-tax purposes, began in 1939, the earliest "third preceding taxable year" thereunder, for the purposes of code section 27 (c), would likewise begin in 1936.

The effect of taking into account any excess of the basic surtax credit for the third preceding taxable year over the adjusted net income for that year is to increase the dividend carry-over, to the same extent that it would have been increased thereby had not title I of the Revenue Act of 1938 been superseded, in respect of income-tax taxable years beginning after December 31, 1938, by chapter 1 of the code.

The amendment affects dividend carry-overs only to taxable years beginning in 1939, and, of such carry-overs, only those affected by the excess mentioned.

AMENDMENTS TO SECTION 113 (A) (11)

These amendments perfect the codification of section 113 (a) (11) of the Revenue Act of 1938 by the inclusion of references to section 141 of that act. Such references appear in the basic section.

The amendments are required for the reason that title I of the Revenue Act of 1938 was not superseded ab initio by chapter 1 of the code but remained in effect for taxable years beginning after December 31, 1937, and before January 1, 1939. The existing section 113 (a) (11) of the code omits the provisions of the basic section, to the extent that they related to the determination of the basis of property acquired during such taxable years in cases where a consolidated return was filed under section 141 of the Revenue Act of 1938. The same is true of provisions governing adjustments to the basis of property held during such a period (if a consolidated return was made) in respect of items relating to that period. The amendments repair these omissions.

AMENDMENTS TO SECTION 504 (A)

These amendments prevent the use, as a deduction from "subchapter A net income" in determining "undistributed subchapter A net income," of any dividends paid in a taxable year beginning in 1939, which were allowed, under section 405 (c) of the Revenue Act of 1938, as a deduction from "title IA net income" in determining "undistributed title IA net income" for a taxable year beginning in 1938. The existing section 504 (a) of the code might permit such a double deduction inasmuch as it specifically denies it only as to dividends for which treatment as dividends paid in the preceding taxable year is claimed under section 504 (c). Dividends treated as paid in a taxable year beginning in 1938, though actually paid in the succeeding taxable year, would be claimed under section 405 (c) of the Revenue Act of 1938.

The words "beginning after December 31, 1937," are inserted after "any preceding taxable year" in order to make it clear that the latter expression in this instance includes a taxable year earlier than one beginning after December 31, 1938, which is the general limitation governing the application of chapter 1 of the code.

AMENDMENT TO SECTION 504 (B)

This amendment restores the punctuation of the basic provision, section 405 (b) of the Revenue Act of 1938.

AMENDMENT TO SECTION 504 (C) (3) (A)

The immediate effect of this amendment is to require that, for the purposes of the subparagraph, dividends paid during a taxable year beginning in 1939 be reduced by the amount thereof allowed under section 405 (c) of the Revenue Act of 1938 as a deduction from "title IA net income" in determining "undistributed title IA net income" for a taxable year beginning in 1938.

The only effect of such a reduction is to decrease, in certain cases of its application, the amount of dividends paid in a taxable year beginning in 1940 allowable as a deduction in computing "undistributed subchapter A net income" for the preceding taxable year beginning in 1939.

The reduction is the same that would have obtained under the basic provision (section 405 (c) (3) (A) of the Revenue Act of 1938) had it not been superseded by section 504 (c) (3) (A) of the code.

AMENDMENT TO SECTION 506 (C) (2) (A)

Under this amendment, that portion of deficiency dividends paid with respect to which credit against an unpaid deficiency, or credit or refund, or both, of a deficiency paid are allowed is to be subtracted from the basic surtax credit for the taxable year of distribution, whether such refund or credit, or both, are allowed under section 407 of the Revenue Act of 1938 or the corresponding provision of the code, section 506. Where the deficiency tax subject of refund or credit by reason of the payment of a deficiency dividend was imposed by title IA of the Revenue Act of 1938, the allowance of the refund or credit is governed by section 407 of that title.

An unpaid deficiency, to qualify as a subject of credit, must be established by a decision of the Board that has become final, by a closing agreement, or by a final judgment. Similarly, a payment of any portion of an asserted deficiency, to qualify as a subject of credit or refund, or both, must be established, by a decision of the Board that has become final, by a closing agreement, or by a final judgment in a refund suit, as a payment, in whole or in part, of an actual deficiency at the time when made. Accordingly, in the case of a deficiency with respect to a tax imposed by title I of the Revenue Act of 1938, the credit and refund provisions of subsections (a) and (b) of section 407 of that act will remain applicable, in some instances, for a number of years. The basic surtax credit for the purposes of computing tax under subchapter A of chapter 2 of the code will therefore be affected by any such application.

AMENDMENT TO SECTION 506 (c) (2) (B)

Section 506 (c) (2) (A), as indicated in the above statement in explanation of the amendment proposed thereto, relates to the effect of deficiency dividends paid in any taxable year on the basic surtax credit (one of the components of the dividends paid credit) for that taxable year.

Section 506 (c) (2) (B) relates to the effect of deficiency dividends on the dividends paid credit for the taxable year preceding the taxable year in which the deficiency dividends are paid.

The existing provision of the code, derived from section 407 (c) (2) (B) of the Revenue Act of 1938, disallows the inclusion, under section 504 (c), of deficiency dividends paid in any taxable year in the dividends paid credit for the preceding taxable year, to the extent of the portion of such deficiency dividends with respect to which the credit under section 504 (a) or the credit or refund, or both, under section 504 (b), are allowed.

The effect of the amendment proposed is to extend such disallowance to deficiency dividends with respect to which credit is allowed under section 407 (a) of the Revenue Act of 1938, or credit or refund, or both, under section 407 (b) of that act.

As in the case of the amendment proposed to section 506 (c) (2) (A), this amendment is designed to remedy a defect in the code which, as explained thereunder, might wholly disappear only after a considerable period.

AMENDMENT TO SECTION 812 (C)

This subsection is derived from section 303 (a) (2) of the Revenue Act of 1926, as amended in full by section 806 (a) of the Revenue Act of 1932 and as amended in part by section 402 of the Revenue Act of 1934.

The amendment perfects the codification of the basic provision by incorporation of the specific reference therein to the gift tax imposed under the Revenue Act of 1932.

Its effect is to restore the deduction, allowed under basic law, in respect of property included in the gross estate, where such property was acquired by gift by a decedent (dying after the date of the enactment of the code) within 5 years prior to his death and in respect of which property a gift tax was paid under the Revenue Act of 1932. The gift tax provisions of the code, derived from those of the Revenue

Act of 1932, as amended, apply to gifts made in 1940 and subsequent years.

AMENDMENTS TO SECTION 813 (A) (2)

These amendments perfect the codification of section 301 (b) of the Revenue Act of 1926, as added by section 801 of the Revenue Act of 1932. The existing language of the code omits the credit, allowed under the basic provision, for gift taxes paid under the Revenue Act of 1932.

The substitution of "this subchapter" for "chapter 3" effects a preferable translation of "this title," as used in the basic provision.

AMENDMENT TO SECTION 813 (B)

This amendment makes the credit for State death taxes paid available for the purposes of the tax imposed by section 860 on estates of decedents nonresidents of and not citizens of the United States. The basic provision, section 301 (c) of the Revenue Act of 1926 (section 301 (b) of the Revenue Act of 1926 as amended in full by section 802 (a) of the Revenue Act of 1932), referred to "the tax imposed by subdivision (a)" of that section, which applied to estates both of resident and nonresident decedents.

AMENDMENT TO SECTION 861 (A) (2)

This paragraph is derived from section 303 (b) (2) of the Revenue Act of 1926, as amended in full by section 806 (b) of the Revenue Act of 1932 and as amended in part by section 402 of the Revenue Act of 1934.

The amendment perfects the codification of the basic provision by incorporation of the specific reference therein to the gift tax imposed by the Revenue Act of 1932.

AMENDMENTS TO SECTION 936 (B)

These amendments perfect the codification of section 402 (b) of the Revenue Act of 1932. The existing language of the code omits the credit, allowed under the basic provision, for gift taxes paid under the Revenue Act of 1932.

The substitution of "813 (a) (2)" for "813 (b)," at the end of paragraph (1), is made for the reason that "section 301 (b) of the Revenue Act of 1926, as amended by this Act," found in the basic provision, appears to refer to such section 301 (b) as added by section 801 of the Revenue Act of 1932. Section 402 (a) of the Revenue Act of 1932, which refers to section 301 (c) as relating to the 80 percent credit, appears to preclude the construction of the expression "section 301 (b) of the Revenue Act of 1926, as amended by this Act" to mean the amendment made by section 802 of the Revenue Act of 1932 and, therefore, to require the construction that it means the amendment made by section 801 of that act. The subject matter, further, requires the construction effected by the amendment.

AMENDMENT TO SECTION 1536

This amendment corrects an error of reference. Section 607 of the Revenue Act of 1934, the provision appropriately in reference, is codified in section 3661 of the code.

A like amendment to section 1430 of the code was made by section 903 of the Social Security Act amendments of 1939.

AMENDMENT TO SECTION 1805

The portion of this section proposed to be amended was derived from sections 9 and 10 of the Silver Purchase Act of 1934, the paragraph relating to the issuance of rules and regulations being derived from section 9; and the definition of the term "the continental United States," from section 10. The remaining portion of I. R. C. 1805 was derived from subdivision 10 of schedule A of title VIII of the Revenue Act of 1926, as added to that schedule by section 8 of the Silver Purchase Act.

The amendment effects the elimination of the definition mentioned, a definition which is useless inasmuch as the term "the continental United States" does not appear elsewhere in I. R. C. 1805. It appears in section 3 of the Silver Purchase Act, which section is properly omitted from the code.

The amendment also effects the elimination, from the paragraph relating to the issuance of rules and regulations, of the words "or of any order issued hereunder." These words are without significance in the section for the reason that the only provisions for the issuance of orders under the Silver Purchase Act are found in sections 6 and 7 thereof, which sections also are properly omitted from the code.

The eliminations mentioned in no way impair the effectiveness of the related provisions of the Silver Purchase Act, since the code repealed laws and parts of laws codified therein only to the extent they related exclusively to internal revenue. Having no such relation, the provisions in question were not repealed by reason of their incorporation in the code.

The transposition of the definition of the term "person" and of the paragraph relating to rules and regulations accomplishes an improvement of form and permits avoidance of repetition of the words "As used in this section--".

AMENDMENT TO SECTION 2887

This amendment corrects a typographical error in the codification of R. S. 3329, as amended.

AMENDMENT TO SECTION 2901 (B)

This amendment perfects the codification of R. S. 3221, as amended, by incorporating therein the effect of the superseding provisions of section 2 of the Permanent Appropriation Repeal Act, 1934 (June 26, 1934, ch. 756, 48 Stat. 1225), so far as they affect the appropriation involved.

Section 2 (a) of the cited repeal act reads as follows, so far as material here:

Effective July 1, 1935, the permanent appropriations under the appropriation titles listed in subsection (b) of this section are repealed, and such portions of any Acts as make permanent appropriations to be expended under such accounts are amended so as to authorize, in lieu thereof, annual appropriations from the general fund of the Treasury in identical terms and in such amounts as now provided by the laws providing such permanent appropriations. * * *

AMENDMENT TO SECTION 3170

This amendment corrects a typographical error in the codification of the second paragraph of section 5 of the act of June 25, 1936 (ch. 815, 49 Stat. 1929). The words omitted in the code provision were "by this Act"; the words intended to be omitted were "by this Act, or".

EFFECTIVE DATE OF AMENDMENTS

The sections of the Internal Revenue Code amended by the joint resolution are to have effect as if such sections, as so amended, had been enacted in the Internal Revenue Code on February 10, 1939, the date of the enactment of the Internal Revenue Code.

The general language of section 2 of the joint resolution is employed in recognition of the fact that not all the sections proposed to be amended have the same effective date or are effective with respect to the same taxable periods.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in existing law made by the joint resolution are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman)

Amended provisions of the Internal Revenue Code:

SEC 27 CORPORATION DIVIDENDS PAID CREDIT.

(c) DIVIDEND CARRY-OVER—There shall be computed with respect to each taxable year of a corporation a dividend carry-over to such year from the two preceding taxable years which shall consist of the sum of—

(1) The amount of the basic surtax credit for the second preceding taxable year, reduced by the adjusted net income for such year, and further reduced by the amount, if any, by which the adjusted net income for the first preceding taxable year exceeds the sum of—

(A) The basic surtax credit for such year; and

(B) The excess, if any, of the basic surtax credit for the third preceding taxable year over the adjusted net income for such year; and

(2) The amount, if any, by which the basic surtax credit for the first preceding taxable year exceeds the adjusted net income for such year.

In the case of a preceding taxable year referred to in this subsection, which begins in 1936 or 1937, the adjusted net income shall be the adjusted net income as defined in section 14 of the Revenue Act of 1936 and the basic surtax credit shall be only the dividends paid credit computed under the Revenue Act of 1936 without the benefit of the dividend carry-over provided in section 27 (b) of such Act. In the case of a preceding taxable year, referred to in this subsection, which begins in 1935, the adjusted net income shall be the adjusted net income as defined in section 13 (a) of the Revenue Act of 1938, 52 Stat 455 and the basic

surtax credit shall be the basic surtax credit as defined in section 27 of the Revenue Act of 1938, 52 Stat. 468.

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SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) BASIS (UNADJUSTED) OF PROPERTY.—The basis of property shall be the cost of such property: except that—

* * * * *

(1) PROPERTY ACQUIRED DURING AFFILIATION.—In the case of property acquired by a corporation, during a period of affiliation from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922 unless a consolidated return was made nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, 45 Stat. 831, or the Revenue Act of 1932, 47 Stat. 213, or the Revenue Act of 1934, 48 Stat. 720, or the Revenue Act of 1936, 49 Stat. 1698, or the Revenue Act of 1938, 52 Stat. 508, shall be determined in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 or the Revenue Act of 1936 or the Revenue Act of 1938, applicable to such period

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SEC. 501. UNDISTRIBUTED SUBCHAPTER A NET INCOME.

For the purposes of this subchapter the term "undistributed subchapter A net income" means the subchapter A net income (as defined in section 505) minus—

(a) The amount of the dividends paid credit provided in section 27 (a) without the benefit of paragraphs (3) and (4) thereof (computed without its reduction under section 27 (b) (1), by the amount of the credit provided in section 26 (a) relating to interest on certain obligations of the United States and Government corporations); but, in the computation of the dividends paid credit for the purposes of this subchapter, the amount allowed under subsection (c) of this section or of section 406 of the Revenue Act of 1958 in the computation of the tax under this subchapter or under Title IA of the Revenue Act of 1938 for any preceding taxable year beginning after December 31, 1937, shall be considered as a dividend paid in such preceding taxable year and not in the year of distribution, and, in the computation of the dividend carry-over for the purposes of this subchapter, the term "adjusted net income" as used in section 27 (c) means the adjusted net income minus the deduction allowed for Federal taxes under section 505 (a) (1);

(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness;

(c) Dividends paid after the close of the taxable year and before the 15th day of the third month following the close of the taxable year, if claimed under this subsection in the return, but only to the extent to which such dividends are includible, for the purposes of chapter 1, in the computation of the basic surtax credit for the year of distribution; but the amount allowed under this subsection shall not exceed either:

(1) The accumulated earnings and profits as of the close of the taxable year; or

(2) The undistributed subchapter A net income for the taxable year computed without regard to this subsection; or

(3) 10 per centum of the sum of—

(A) The dividends paid during the taxable year (reduced by the amount allowed under this subsection in the computation of the tax under this subchapter for the taxable year preceding the taxable year or, in the case of a taxable year beginning in 1939, by the amount allowed under section 405 (c) of the Revenue Act of 1938 in the computation of the tax under Title I A of such Act for a taxable year beginning prior to January 1, 1939.); and

(B) The consent dividends credit for the taxable year.

SEC. 506. DEFICIENCY DIVIDENDS—CREDITS AND REFUNDS.

* * * * *
 (c) DEFICIENCY DIVIDENDS.—

* * * * *
 (2) EFFECT ON DIVIDENDS PAID CREDIT.—

(A) FOR TAXABLE YEAR IN WHICH PAID.—Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, of this section or section 407 of the Revenue Act of 1938, are allowed) shall be subtracted from the basic surtax credit for such year, but only for the purpose of computing the tax under this subchapter for such year and succeeding years.

(B) FOR PRIOR TAXABLE YEAR.—Deficiency dividends paid in any taxable year (to the extent of the portion thereof with respect to which the credit under subsection (a), or the credit or refund under subsection (b), or both, of this section or section 407 of the Revenue Act of 1938, are allowed) shall not be allowed under section 504 (c) in the computation of the tax under this subchapter for any taxable year preceding the taxable year in which paid.

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 SEC. 812. NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate—

* * * * *
 (c) PROPERTY PREVIOUSLY TAXED.—An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under Title III of the Revenue Act of 1932, 47 Stat. 245, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor.

Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this subsection shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under subsections (a), (b), and (d) as the amount otherwise deductible under this subsection bears to the value of the decedent's gross estate. Where the property referred to in this subsection consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

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SEC. 813. CREDITS AGAINST TAX.

(a) GIFT TAX.—

(1) **REVENUE ACT OF 1924.**—In case a tax has been imposed under section 319 of the Revenue Act of 1924, 43 Stat. 313, as amended by section 324 of the Revenue Act of 1926, 44 Stat. 86, upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this subchapter to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of this subchapter, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by said section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

(2) **REVENUE ACT OF 1932 or chapter 4.**—

(A) If a tax has been paid under chapter 4 or under Title III of the Revenue Act of 1932, 47 Stat. 245, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of [chapter 3] this subchapter, then there shall be credited against the tax imposed by section 810 or 860 the amount of the tax paid under chapter 4 or under Title III of the Revenue Act of 1932 with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 810 or 860 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate.

(B) For the purposes of paragraph (A), the amount of tax paid for any year under chapter 4 or under Title III of the Revenue Act of 1932 with respect to any property shall be an amount which bears the same ratio to the total tax paid for such year as the value of such property bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(b) **ESTATE, SUCCESSION, LEGACY, AND INHERITANCE TAXES.**—The tax imposed by section 810 or 860 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). The credit allowed by this subsection shall not exceed 80 per centum of the tax imposed by section 810 or 860 (after deducting from such tax the credits provided by section 813 (a) (2)), and shall include only such taxes as were actually paid and credit therefor claimed within four years after the filing of the return required by section 821 or 864, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Board of Tax Appeals within the time prescribed in section 871, then within such four-year period or before the expiration of 60 days after the decision of the Board becomes final.

(2) If, under section 822 (a) (2) or section 871 (h), an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such four year period or before the date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 910 to 912, inclusive), be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

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SEC. 861. NET ESTATE.

(a) **DEDUCTIONS ALLOWED.**—For the purpose of the tax the value of the net estate shall be determined, in the case of a nonresident not a citizen of the United States, by deducting from the value of that part of his gross estate (determined

as provided in section 811), which at the time of his death is situated in the United States.—

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(2) **PROPERTY PREVIOUSLY TAXED.**—An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under chapter 4, or under *Title III of the Revenue Act of 1932, 47 Stat. 245*, or an estate tax imposed under this subchapter, the Revenue Act of 1926, 44 Stat. 69, or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in that part of the decedent's gross estate which at the time of his death is situated in the United States, and only if in determining the value of the net estate of the prior decedent no deduction was allowable under this paragraph in respect of the property or property given in exchange therefor. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior decedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1) and (3) of this subsection as the amount otherwise deductible under this paragraph bears to the value of that part of the decedent's gross estate which at the time of his death is situated in the United States. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction.

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SEC. 936. CREDITS AGAINST TAX.

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(b) (1) If a tax has been paid under chapter 4 or under *Title III of the Revenue Act of 1932, 47 Stat. 245*, on a gift, and thereafter upon the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for the purposes of this subchapter, then there shall be credited against the tax imposed by section 935 the amount of the tax paid under chapter 4 or under *Title II of the Revenue Act of 1932* with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit (A) shall not exceed an amount which bears the same ratio to the tax imposed by section 935 as the value (at the time of the gift or at the time of the death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate, bears to the value of the entire gross estate, and (B) shall not exceed the amount by which the gift tax paid under chapter 4 or under *Title III of the Revenue Act of 1932* with respect to so much of the property as constituted the gift as is included in the gross estate, exceeds the amount of the credit under section [813 (b)] 813 (a) (2).

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SEC. 1536. OTHER LAWS APPLICABLE.

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section [3762] 3661, insofar as applicable and not inconsistent with the provisions of this subchapter shall be applicable with respect to the taxes imposed by this subchapter

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SEC. 1805. SILVER BULLION.

On all transfers of any interest in silver bullion, if the price for which such interest is or is to be transferred exceeds the total of the cost thereof and allowed expenses, 50 per centum of the amount of such excess. On every such transfer there shall be made and delivered by the transferor to the transferee a memorandum to which there shall be affixed lawful stamps in value equal to the tax

thereon. Every such memorandum shall show the date thereof, the names and addresses of the transferor and transferee, the interest in silver bullion to which it refers, the price for which such interest is or is to be transferred and the cost thereof and the allowed expenses. Stamps affixed under this section shall be canceled (in lieu of the manner provided in section 1816) by such officers and in such manner as regulations under this section shall prescribe. Such officers shall cancel such stamps only if it appears that the proper tax is being paid, and when stamps with respect to any transfer are so canceled, the transferor and not the transferee shall be liable for any additional tax found due or penalty with respect to such transfer. The Commissioner shall abate or refund, in accordance with regulations issued hereunder, such portion of any tax hereunder as he finds to be attributable to profits (1) realized in the course of the transferor's regular business of furnishing silver bullion for industrial, professional, or artistic use and (a) not resulting from a change in the market price of silver bullion, or (b) offset by contemporaneous losses incurred in transactions in interests in silver bullion determined, in accordance with such regulations, to have been specifically related hedging transactions; or (2) offset by contemporaneous losses attributable to changes in the market price of silver bullion and incurred in transactions in silver foreign exchange determined, in accordance with such regulations, to have been hedged specifically by the interest in silver bullion transferred. The provisions of this section shall extend to all transfers in the United States of any interest in silver bullion, and to all such transfers outside the United States if either party thereto is a resident of the United States or is a citizen of the United States who has been a resident thereof within three months before the date of the transfer or if such silver bullion or interest therein is situated in the United States; and shall extend to transfers to the United States Government (the tax in such cases to be payable by the transferor), but shall not extend to transfers of silver bullion by deposit or delivery at a United States mint under proclamation by the President or in compliance with any Executive order issued pursuant to section 7 of the Silver Purchase Act of 1934, 48 Stat. 1179 (U. S. C., Title 31, § 316 (a)).

As used in this section—

The term "cost" means the cost of the interest in silver bullion to the transferor, except that (a) in case of silver bullion produced from materials containing silver which has not previously entered into industrial, commercial, or monetary use, the cost to a transferor who is the producer shall be deemed to be the market price at the time of production determined in accordance with regulations issued hereunder; (b) in the case of an interest in silver bullion acquired by the transferor otherwise than for valuable consideration, the cost shall be deemed to be the cost thereof to the last previous transferor by whom it was acquired for a valuable consideration; and (c) in the case of any interest in silver bullion acquired by the transferor in a wash sale, the cost shall be deemed to be the cost to him of the interest transferred by him in such wash sale, but with proper adjustment, in accordance with regulations under this section, when such interests are in silver bullion for delivery at different times.

The term "transfer" means a sale, agreement of sale, agreement to sell, memorandum of sale or delivery of, or transfer, whether made by assignment in blank or by any delivery, or by any paper or agreement or memorandum or any other evidence of transfer or sale; or means to make a transfer as so defined.

The term "interest in silver bullion" means any title or claim to, or interest in, any silver bullion or contract therefor.

The term "allowed expenses" means usual and necessary expenses actually incurred in holding, processing, or transporting the interest in silver bullion as to which an interest is transferred (including storage, insurance, and transportation charges but not including interest, taxes, or charges in the nature of overhead), determined in accordance with regulations issued hereunder.

The term "memorandum" means a bill, memorandum, agreement, or other evidence of a transfer.

The term "wash sale" means a transaction involving the transfer of an interest in silver bullion and, within thirty days before or after such transfer, the acquisition by the same person of an interest in silver bullion. Only so much of the interest so acquired as does not exceed the interest so transferred, and only so much of the interest so transferred as does not exceed the interest so acquired, shall be deemed to be included in the wash sale.

The term "silver bullion" means silver which has been melted, smelted, or refined and is in such state or condition that its value depends primarily upon the silver content and not upon its form. [The Secretary is authorized to issue, with

the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this section, or of any order issued hereunder.

[As used in this section—

[The term "person" means an individual, partnership, association, or corporation;

[The term "the continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska.]

The term "person" means an individual, partnership, association, or corporation.

The Secretary is authorized to issue, with the approval of the President, such rules and regulations as the Secretary may deem necessary or proper to carry out the purposes of this section.

SEC. 2887. DRAWBACK ON SPIRITS.

Distilled spirits upon which all taxes have been paid may be exported, with the privilege of drawback, and in distillers' original casks or packages, containing not less than twenty wine gallons each, on application of the owner thereof to the collector of customs at any port of entry, and under such rules and regulations, and after making such entry as may be prescribed by law and by the Secretary. The entry for such exportation shall be in triplicate, and shall contain the name of the person applying to export, the name of the distiller, the name of the district in which the spirits were distilled, the name of the vessel by which, and the name of the port to which, they are to be exported; and the form of the entry shall be as follows:

EXPORT ENTRY OF DISTILLED SPIRITS ENTITLED TO DRAWBACK

Entry of spirits distilled by _____, in _____ district, State of _____, to be exported by _____, in the _____, whereof _____ is master, bound to _____.

And the entry shall specify the whole number of casks or packages, the marks and serial numbers thereon, the quality or kind of spirits as known in commerce, the number of gauge or wine gallons and of proof gallons; and the amount of the tax on such spirits shall be verified by the oath of the owner of the spirits, and that the tax has been paid thereon, and that they are truly intended to be exported to the port of _____, and not to be relanded within the limits of the United States. One bill of lading, duly signed by the master of the vessel, shall be deposited with said collector, to be filed at his office with the entry retained by him. One of said entries shall be, when the shipment is completed, transmitted to the Secretary, to be recorded and filed in his office. The lading on board said vessel shall be only after the receipt of an order or permit signed by the collector of customs and directed to a customs gauger, and after each cask or package shall have been distinctly marked or branded by said gauger as follows: "For export from U. S. A." and the tax-paid stamps thereon obliterated. The casks or packages shall be inspected and gauged alongside of or on the vessel by the gauger designated by said collector, under such rules and regulations as the Secretary may prescribe; and on application of the said collector it shall be the duty of the surveyor of the port to designate and direct one of the customhouse inspectors to superintend such shipment. And the gauger aforesaid shall make a full return of such inspection and gauging in such form as may be prescribed by the Secretary, showing by whom each cask of such spirits was distilled, the serial number of the cask, and [by] of the tax-paid stamp attached thereto, the proof and quantity of such spirits as per the original gauge-mark on each cask, and the quantity in proof and wine gallons as per the gauge then made by him. And said gauger shall certify on such return that the shipment has been made, in his presence, on board the vessel named in the entry for export, which return shall be indorsed by said customhouse inspector certifying that the casks or packages have been shipped under his supervision on board said vessel, and the tax-paid stamps obliterated; and the said inspector shall make a similar certificate to the surveyor of the port, indorsed on or to be attached to the entry in possession of the customhouse.

A drawback shall be allowed upon distilled spirits on which the tax has been paid and exported to foreign countries, under the provisions of this section, when exported as herein provided for. The drawback allowed shall include the taxes levied and paid upon the distilled spirits exported, and the rate of drawback shall be equal to the rate of the internal tax paid in respect of the distilled spirits exported, but shall not exceed a rate of \$2.25 (or, in the case of brandy, \$2) per proof gallon, as per last gauge of said spirits prior to exportation, and shall be due and payable only after the proper entries have been made and filed and all

other conditions complied with as hereinbefore required, and on filing with the Secretary the proper claim, accompanied by the certificate of the collector of customs at the port of entry where the spirits are entered for export that such spirits have been received into his custody and the tax-paid stamps thereon obliterated; and the Secretary shall prescribe such rules and regulations in relation thereto as may be necessary to secure the Treasury of the United States against frauds.

SEC. 2901. LOSS ALLOWANCES.

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(b) ACCIDENTAL FIRE OR OTHER CASUALTY.—The Secretary, upon the production to him of satisfactory proof of the actual destruction by accidental fire or other casualty, and without any fraud, collusion, or negligence of the owner thereof, of any distilled spirits, while the same remained in the custody of any officer of internal revenue in any internal revenue bonded warehouse or of any grape brandy withdrawn for use in the fortification of sweet wines and destroyed prior to such use while stored in the fortifying room on the winery premises, and before the tax thereon has been paid, may abate the amount of internal revenue 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 or grape brandy, the said Secretary shall refund the same to the owners thereof out of [any moneys in the Treasury not otherwise appropriated] *annual appropriations from the general fund of the Treasury*. And when any distilled spirits are destroyed by accidental fire or other casualty, without any fraud, collusion, or negligence of the owner thereof, after the time when the same should have been drawn off by the storekeeper-gauger and placed in the internal revenue bonded 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. When the owners of distilled spirits or grape brandy in the cases provided for by this section may be indemnified against such tax by a valid claim of insurance, for a sum greater than the actual value of the distilled spirits or grape brandy before and without the tax being paid, the tax shall not be remitted to the extent of such insurance.

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SEC. 3170. TRANSFER AND DELEGATION OF POWERS.

The Secretary is authorized to confer and impose upon the Commissioner and any of his assistants, agents, or employees, and upon any other officer, employee, or agent of the Treasury Department, any of the rights, privileges, powers, duties, and protection conferred or imposed upon the Secretary, or any officer or employee of the Treasury Department, [or] by any law now or hereafter in force relating to the taxation, exportation, transportation, manufacture, possession, or use of, or traffic in, distilled spirits, wine, fermented liquors, or denatured alcohol.

