

## REVENUE BILL OF 1926

FEBRUARY 22, 1926.—Ordered to be printed

Mr. GREEN, from the committee of conference, submitted the following

### CONFERENCE REPORT

[To accompany H. R. 1]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 1) to reduce and equalize taxation, to provide revenue, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 3, 4, 5, 21, 27, 29, 34, 38, 66, 84, 109, 110, 138, 139, 140, 169, 196, 202, and 203.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 22, 23, 25, 26, 28, 31, 32, 35, 37, 39, 40, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 86, 91, 93, 94, 96, 97, 98, 99, 101, 102, 103, 104, 105, 106, 107, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 129, 130, 131, 133, 134, 135, 136, 137, 142, 143, 144, 145, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 171, 175, 176, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 192, 195, 197, 199, 200, and 201; and agree to the same.

#### Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment as follows:

On page 3, lines 2, 4, and 5, of the Senate engrossed amendments strike out "bed" and insert *deposit*; and on page 3, line 4, of the Senate engrossed amendments, before "exten-" insert *uninterrupted*; and on page 3, line 5, of the Senate engrossed amendments, after "continuing" insert *commercial*; and on page 3, line 10, of the Senate engrossed amendments, strike out "30" and insert *27 1/2*; and on page 3 of the Senate engrossed amendments, strike out lines 17 to 20, inclusive; and the Senate agree to the same.

**Amendment numbered 16:**

That the House recede from its disagreement to the amendment of the Senate numbered 16, and agree to the same with an amendment as follows:

On page 6 of the Senate engrossed amendments, line 9, after "other" insert *casual*; and the Senate agree to the same.

**Amendment numbered 17:**

That the House recede from its disagreement to the amendment of the Senate numbered 17, and agree to the same with an amendment as follows:

On page 7 of the Senate engrossed amendments, line 7, strike out "during and"; and the Senate agree to the same.

**Amendment numbered 19:**

That the House recede from its disagreement to the amendment of the Senate numbered 19, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*(14) In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States if such amounts constitute earned income as defined in section 209; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph and a period.*

And the Senate agree to the same.

**Amendment numbered 20:**

That the House recede from its disagreement to the amendment of the Senate numbered 20, and agree to the same with an amendment as follows:

Omit the matter proposed to be inserted by the Senate amendment and on page 285 of the House bill, after line 2 and after the matter inserted by amendment numbered 201, insert the following:

**SALARIES OF STATE AND MUNICIPAL OFFICERS**

*Sec. 1211. Any taxes imposed by the Revenue Act of 1924 or prior revenue Acts upon any individual in respect of amounts received by him as compensation for personal services as an officer or employee of any State or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly), shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded and a period.*

And the Senate agree to the same.

**Amendment numbered 24:**

That the House recede from its disagreement to the amendment of the Senate numbered 24, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*(11) In the case of a casual sale or other casual disposition of real property, a reasonable allowance for future expense liabilities, incurred under the provisions of the contract under which such sale or other dis-*

position was made, under such regulations as the Commissioner, with the approval of the Secretary, may prescribe, including the giving of a bond, with such sureties and in such sum (not less than the estimated tax liability computed without the benefit of this paragraph) as the Commissioner may require, conditioned upon the payment (notwithstanding any statute of limitations) of the tax, computed without the benefit of this paragraph, in respect of any amounts allowed as a deduction under this paragraph and not actually expended in carrying out the provisions of such contract and a period.

And on page 48 of the House bill, line 8, strike out the period and insert in lieu thereof a semicolon.

And the Senate agree to the same.

Amendment numbered 30:

That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows:

On page 11 of the Senate engrossed amendments, line 4, after "include" insert (*at the time of filing their returns*); and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment as follows:

Omit the matter proposed to be inserted by the Senate amendment and strike out lines 8 to 13, inclusive, on page 76 of the House bill and insert in lieu thereof the following:

*Sec. 230. (a) In lieu of the tax imposed by section 230 of the Revenue Act of 1924, there shall be levied, collected, and paid for each taxable year upon the net income of every corporation, a tax at the following rates:*

(1) *For the calendar year 1925, 13 per centum of the amount of the net income in excess of the credits provided in sections 236 and 263; and*

(2) *For each calendar year thereafter, 13½ per centum of such excess amount.*

(b) *A taxpayer whose taxable year is the calendar year and who elects for the calendar year 1925 to pay the tax imposed by this section in four installments as provided in section 270, shall pay such installments in amounts as follows:*

(1) *The amount of the first and second installments shall each equal 24 per centum of the tax; and*

(2) *The amount of the third and fourth installments shall each equal 26 per centum of the tax and a period.*

And the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment as follows:

On page 13 of the Senate engrossed amendments strike out all after the period in line 3 down to and including line 10; and in lieu thereof insert *Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products mar-*

keted for members, and may purchase supplies and equipment for non-members in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases and a semicolon; and the Senate agree to the same.

Amendments numbered 41 and 42:

That the House recede from its disagreement to the amendments of the Senate numbered 41 and 42, and agree to the same with an amendment as follows:

On page 92 of the House bill strike out lines 3 to 10, inclusive, and insert in lieu thereof the following:

(c) For the purpose of this section two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the voting stock of the other or others, or (2) if at least 95 per centum of the voting stock of two or more corporations is owned by the same interests. This subdivision shall be applicable to the determination of affiliation for the taxable year 1925.

(d) For the purpose of this section two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the stock of the other or others, or (2) if at least 95 per centum of the stock of two or more corporations is owned by the same interests. As used in this subdivision the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. This subdivision shall be applicable to the determination of affiliation for the taxable year 1926 and each taxable year thereafter.

(e) A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of this section and a period.

And on page 92 of the House bill, line 11, strike out "(d)" and insert (f); and on page 92 of the House bill, line 20, strike out "(e)" and insert (g);

And the Senate agree to the same.

Amendment numbered 50:

That the House recede from its disagreement to the amendment of the Senate numbered 50, and agree to the same with an amendment as follows:

Omit the matter proposed to be inserted by the Senate amendment and on page 104 of the House bill at the end of line 19 insert *Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy and a period; and the Senate agree to the same.*

Amendment numbered 63:

That the House recede from its disagreement to the amendment of the Senate numbered 63, and agree to the same with an amendment as follows:

On page 17 of the Senate engrossed amendments, line 4, strike out all after "(a)" down to and including "deficiency." in line 10; and on page 17 of the Senate engrossed amendments, lines 15 and 16, strike out "excluding Sundays and legal holidays of the District of Columbia" and insert *not counting Sunday as the sixtieth day; and ou*

page 18 of the Senate engrossed amendments, line 23, strike out all after "deficiency." down to and including line 2 on page 19; and the Senate agree to the same.

Amendment numbered 72:

That the House recede from its disagreement to the amendment of the Senate numbered 72, and agree to the same with an amendment as follows:

On page 22 of the Senate engrossed amendments, line 3; strike out "two" and insert *three*; and the Senate agree to the same.

Amendment numbered 87:

That the House recede from its disagreement to the amendment of the Senate numbered 87, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

CLAIMS AGAINST TRANSFERRED ASSETS

SEC. 280. (a) *The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):*

(1) *The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.*

(2) *The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the taxpayer.*

*Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.*

(b) *The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:*

(1) *Within one year after the expiration of the period of limitation for assessment against the taxpayer; or*

(2) *If the period of limitation for assessment against the taxpayer expired before the enactment of this Act but assessment against the taxpayer was made within such period,—then within six years after the making of such assessment against the taxpayer, but in no case later than one year after the enactment of this Act.*

(3) *If a court proceeding against the taxpayer for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.*

(c) *For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.*

(d) *The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the*

notice under subdivision (a) of section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(e) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(f) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee and a period.

And the Senate agree to the same.

Amendment numbered 88:

That the House recede from its disagreement to the amendment of the Senate numbered 88, and agree to the same with an amendment as follows:

On page 30 of the Senate engrossed amendments, line 18, strike out all after "Commissioner" through "thereto)" in line 20; and on page 30 of the Senate engrossed amendments, line 22, strike out "under this Act" and insert *in respect of a tax imposed by this title or by prior income, excess-profits, or war-profits tax Act*; and the Senate agree to the same.

Amendment numbered 89:

That the House recede from its disagreement to the amendment of the Senate numbered 89, and agree to the same with an amendment as follows:

On page 32 of the Senate engrossed amendments, line 23, strike out "of" the first time it appears in said line and insert *from*; and the Senate agree to the same.

Amendment numbered 90:

That the House recede from its disagreement to the amendment of the Senate numbered 90, and agree to the same with an amendment as follows:

On page 33 of the Senate engrossed amendments, line 20, strike out "tax" and insert *determination*; and on page 41 of the Senate engrossed amendments, line 20, strike out "sections" and insert *section*; and the Senate agree to the same.

Amendment numbered 92:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment as follows:

On page 42 of the Senate engrossed amendments, line 10, strike out "two" and insert *three*; and on page 42 of the Senate engrossed amendments, line 16, strike out "two" and insert *three*; and on page 42 of the Senate engrossed amendments, line 18, strike out "two" and insert *three*; and the Senate agree to the same.

Amendment numbered 95:

That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert *paid, or, in the case of a tax imposed by this Act, within three years after the tax was paid*; and the Senate agree to the same.

## Amendment numbered 100:

That the House recede from its disagreement to the amendment of the Senate numbered 100, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be stricken out by the Senate amendment insert the following:

*SEC. 300. When used in this title—*

(a) The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent;

(b) The term "net estate" means the net estate as determined under the provisions of section 303;

(c) The term "month" means calendar month; and

(d) The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States; or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

*SEC. 301. (a) In lieu of the tax imposed by Title III of the Revenue Act of 1924, a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 303) is hereby imposed upon the transfer of the net estate of every decedent dying after the enactment of this Act, whether a resident or nonresident of the United States;*

*1 per centum of the amount of the net estate not in excess of \$50,000;*

*2 per centum of the amount by which the net estate exceeds \$50,000 and does not exceed \$100,000;*

*3 per centum of the amount by which the net estate exceeds \$100,000 and does not exceed \$200,000;*

*4 per centum of the amount by which the net estate exceeds \$200,000 and does not exceed \$400,000;*

*5 per centum of the amount by which the net estate exceeds \$400,000 and does not exceed \$600,000;*

*6 per centum of the amount by which the net estate exceeds \$600,000 and does not exceed \$800,000;*

*7 per centum of the amount by which the net estate exceeds \$800,000 and does not exceed \$1,000,000;*

*8 per centum of the amount by which the net estate exceeds \$1,000,000 and does not exceed \$1,500,000;*

*9 per centum of the amount by which the net estate exceeds \$1,500,000 and does not exceed \$2,000,000;*

*10 per centum of the amount by which the net estate exceeds \$2,000,000 and does not exceed \$2,500,000;*

*11 per centum of the amount by which the net estate exceeds \$2,500,000 and does not exceed \$3,000,000;*

*12 per centum of the amount by which the net estate exceeds \$3,000,000 and does not exceed \$3,500,000;*

*13 per centum of the amount by which the net estate exceeds \$3,500,000 and does not exceed \$4,000,000;*

*14 per centum of the amount by which the net estate exceeds \$4,000,000 and does not exceed \$5,000,000;*

15 per centum of the amount by which the net estate exceeds \$5,000,000 and does not exceed \$6,000,000;

16 per centum of the amount by which the net estate exceeds \$6,000,000 and does not exceed \$7,000,000;

17 per centum of the amount by which the net estate exceeds \$7,000,000 and does not exceed \$8,000,000;

18 per centum of the amount by which the net estate exceeds \$8,000,000 and does not exceed \$9,000,000;

19 per centum of the amount by which the net estate exceeds \$9,000,000 and does not exceed \$10,000,000;

20 per centum of the amount by which the net estate exceeds \$10,000,000.

(b) The tax imposed by this section 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. The credit allowed by this subdivision shall not exceed 80 per centum of the tax imposed by this section, and shall include only such taxes as were actually paid and credit therefor claimed within three years after the filing of the return required by section 304.

SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of \$5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death, except in case of a bona fide sale for an adequate and full consideration in money or money's



worth. The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death but after the enactment of this Act without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall be deemed and held to have been made in contemplation of death within the meaning of this title;

(e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: Provided, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: Provided further, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants;

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and

(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over \$40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

(h) Except as otherwise specifically provided therein subdivisions (b) (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

(i) If any one of the transfers, trusts, interests, rights, or powers, enumerated and described in subdivisions (c), (d), and (f) of this section is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such

transaction, over the value of the consideration received therefor by the decedent.

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages upon, or any indebtedness in respect to, property (except, in the case of a resident decedent, where such property is not situated in the United States), to the extent that such claims, mortgages, or indebtedness were incurred or contracted bona fide and for an adequate and full consideration in money or money's worth, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) 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 such 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 the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on 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 not deducted under paragraph (1) or (3) of this subdivision;

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; and

(4) An exemption of \$100,000.

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) That proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated, but in no case shall the amount so deducted exceed 10 per centum of the value of that part of his gross estate which at the time of his death is situated in the United States;

(2) 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 such 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 the Revenue Act of 1924, or an estate tax imposed under this or any prior Act of Congress was paid by or on behalf of the donor or the estate of such prior decedent as the case may be, and only in the amount of the value placed by the Commissioner on 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 not deducted under paragraph (1) or (3) of this subdivision; and

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(c) No deduction shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section 304 the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

(d) For the purpose of this title, stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of subdivision (c) or (d) of section 302, shall be deemed to be situated in the United States, if so situated either at the time of the transfer, or at the time of the decedent's death.

(e) The amount receivable as insurance upon the life of a nonresident decedent, and any moneys deposited with any person carrying on the banking business, by or for a nonresident decedent who was not engaged in business in the United States at the time of his death, shall not, for the purpose of this title, be deemed property within the United States.

(f) Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, or the Territories of Alaska or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

SEC. 304. (a) The executor, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (2) the deductions allowed under section 303; (3) the value of the net estate of the decedent as defined in section 303; and (4) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

(b) Return shall be made in all cases where the gross estate at the death of the decedent exceeds \$100,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate.

SEC. 305. (a) The tax imposed by this title shall be due and payable one year after the decedent's death, and shall be paid by the executor to the collector.

(b) Where the Commissioner finds that the payment on the due date of any part of the amount determined by the executor as the tax would impose undue hardship upon the estate, the Commissioner may extend the time for payment of any such part not to exceed five years from the due date. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(c) If the time for the payment is thus extended there shall be collected, as a part of such amount, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date of the tax to the expiration of the period of the extension.

(d) The time for which the Commissioner may extend the time for payment of the estate tax imposed by Title IV of the Revenue Act of 1921 shall be five years.

SEC. 306. As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

SEC. 307. As used in this title in respect of a tax imposed by this title the term "deficiency" means—

(1) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the executor upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax; or

(2) If no amount is shown as the tax by the executor upon his return, or if no return is made by the executor, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, refunded, or otherwise repaid in respect of such tax.

SEC. 308. (a) If the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the executor by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the executor may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 312 or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the executor, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) If the executor files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) If the executor does not file a petition with the Board within the time prescribed in subdivision (a) of this section, the deficiency, notice of which has been mailed to the executor, shall be assessed, and shall be paid upon notice and demand from the collector.

(d) The executor shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subdivision (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the executor, and to determine whether any additional amount or addition to the tax should be assessed, if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) If after the enactment of this Act the Commissioner has mailed to the executor notice of a deficiency as provided in subdivision (a), and

the executor files a petition with the Board within the time prescribed in such subdivision, the Commissioner shall have no right to determine any additional deficiency, except in the case of fraud, and except as provided in subdivision (e) of this section or in subdivision (c) of section 312. If the executor is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered, for the purposes of this subdivision or of subdivision (a) of this section, or of section 319, as a notice of a deficiency, and the executor shall have no right to file a petition with the Board of Tax Appeals based on such notice, nor shall such assessment or collection be prohibited by the provisions of subdivision (a) of this section.

(g) For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of section 1005.

(h) Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the due date of the tax to the date the deficiency is assessed, or, in the case of a waiver under subdivision (d) of this section, to the thirtieth day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

(i) Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the estate, the Commissioner with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax) may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of two years. If an extension is granted, the Commissioner may require the executor to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension. In such case there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 1 per centum a month for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

(j) The 50 per centum addition to the tax provided by section 3176 of the Revised Statutes, as amended, shall, when assessed after the enactment of this Act in connection with an estate tax, be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of subdivision (h) of this section shall not be applicable.

SEC. 309. (a) (1) Where the amount determined by the executor as the tax imposed by this title, or any part of such amount, is not paid on the due date of the tax, there shall be collected as a part of the tax, interest

upon such unpaid amount at the rate of 1 per centum a month from the due date until it is paid.

(2) Where an extension of time for payment of the amount so determined as the tax by the executor has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under subdivision (c) of section 305, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subdivision, interest at the rate of 1 per centum a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Where a deficiency, or any interest assessed in connection therewith under subdivision (h) of section 308, or any addition to the tax provided for in section 3176 of the Revised Statutes, as amended, is not paid in full within 30 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(c) If a bond is filed, as provided in section 312, the provisions of subdivision (b) of this section shall not apply to the amount covered by the bond.

SEC. 310. (a) Except as provided in section 311, the amount of the estate taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of three years after the return was filed.

(b) The running of the statute of limitations provided in this section or in section 311 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 308) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

SEC. 311. (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) Where the assessment of any tax imposed by this title or of any estate or gift tax imposed by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the executor.

(c) This section shall not bar a distraint or proceeding in court begun before the enactment of the Revenue Act of 1924; nor shall it authorize the assessment of a tax or the collection thereof by distraint or by proceeding in court (1) if at the time of the enactment of this Act such assessment, distraint, or proceeding was barred by the statutory period of limitation properly applicable thereto, unless prior to the enactment of this Act the Commissioner and the executor agreed in writing thereto, or (2) contrary to the provisions of subdivision (a) of section 308 of this Act.

**SEC. 312.** (a) If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under subdivision (a) of section 308, then the Commissioner shall mail a notice under such subdivision within 60 days after the making of the assessment.

(c) The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the executor, despite the provisions of subdivision (f) of section 308 and whether or not the executor has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) A jeopardy assessment may not be made after the decision of the Board has become final or after the executor has filed a petition for review of the decision of the Board.

(f) When a jeopardy assessment has been made the executor, within 30 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in subdivision (j) of this section.

(g) If the bond is given before the executor has filed his petition with the Board under subdivision (a) of section 308, the bond shall contain a further condition, that if a petition is not filed within the period provided in such subdivision, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subdivision.

(h) Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The executor shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the executor, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the executor, be proportionately reduced.

(i) When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision



of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond, shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be refunded. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) In the case of the amount collected under subdivision (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 8 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under subdivision (i) of this section, or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in subdivision (h) of section 508. If the amount included in the notice and demand from the collector under subdivision (i) of this section is not paid in full within 30 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum a month from the date of such notice and demand until it is paid.

(k) No claim in abatement shall be filed in respect of any assessment made after the enactment of this Act in respect of any estate or gift tax.

SEC. 319. (a) The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(b) If the executor makes written application to the Commissioner for determination of the amount of the tax and discharge from personal liability therefor, the Commissioner (as soon as possible, and in any event within one year after the making of such application, or, if the application is made before the return is filed, then within one year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 310) shall notify the executor of the amount of the tax. The executor, upon payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax hereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

(c) The provisions of subdivision (b) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may hereafter be determined to be due, unless the title to such part of the gross estate has passed to a bona fide purchaser for value, in which case such part shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, or distributees.

SEC. 314. (a) If the tax herein imposed is not paid on or before the due date thereof the collector shall, upon instruction from the Commissioner, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States having jurisdiction, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the

court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This subdivision in so far as it applies to the collection of a deficiency shall be subject to the provisions of section 308.

(b) If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of \$40,000, of such policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 315. (a) Unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate, releasing any or all property of such estate from the lien herein imposed.

(b) If (1) the decedent makes a transfer, by trust or otherwise, of any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) or (2) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for an adequate and full consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for an adequate and full consideration in money or money's worth.

SEC. 316. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and

demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits (or refunds):

(1) The liability, at law or in equity, of a transferee of property of a decedent or donor, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this title or by any prior estate tax Act or by any gift tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the decedent or donor.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the executor or donor; or

(2) If the period of limitation for assessment against the executor expired before the enactment of this Act but assessment against the executor was made within such period,—then within six years after the making of such assessment against the executor, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the executor or donor for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 308 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(d) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(e) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

SEC. 317. (a) Upon notice to the Commissioner that any person is acting as executor, such person shall assume the powers, rights, duties, and privileges of an executor in respect of a tax imposed by this title or by any prior estate tax Act, until notice is given that such person is no longer acting as executor.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 316, the fiduciary shall assume on behalf of such person the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if addressed in the name of the decedent or other person subject to liability and mailed to his last known address, shall be sufficient for the purposes of this title.

Sec. 318. (a) If after the enactment of this Act the Commissioner determines that any assessment should be made in respect of any estate or gift tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, the Revenue Act of 1921, or the Revenue Act of 1924, or by any such Act as amended, the Commissioner is authorized to send by registered mail to the person liable for such tax notice of the amount proposed to be assessed, which notice shall for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such determination the amount which should be assessed (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in case of delinquency in payment after notice and demand and the provisions prohibiting claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except that in the case of an estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(b) If before the enactment of this Act any person has appealed to the Board of Tax Appeals under subdivision (a) of section 308 of the Revenue Act of 1924 (if such appeal relates to a tax imposed by Title III of such Act or to so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(c) If before the enactment of this Act the Commissioner has mailed to any person a notice under subdivision (a) of section 308 of the Revenue Act of 1924 (whether in respect of a tax imposed by Title III of such Act or in respect of so much of an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section as was not assessed before June 3, 1924), and if the 60-day period referred to in such subdivision has not expired before the enactment of this Act and no appeal has been filed before the enactment of this Act, such person may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and the powers, duties, rights, and privileges of the Commissioner and of the person entitled to file the petition, and the jurisdiction of the Board and of the courts, shall, whether or not the petition is filed, be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (a) of this section.

(d) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner, after the enactment of this Act, finally determines the amount of the deficiency, he is authorized to send by registered mail to the person liable for such tax notice of such deficiency, which notice shall, for the purposes of this Act, be considered a notice under subdivision (a) of section 308 of this Act. In the case of any such final determination the amount of the tax (whether as deficiency or additional tax or as interest, penalty, or other addition to the tax) shall be computed as if this Act had not been enacted, but the amount so computed shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including the provisions in cases of delinquency in payment after notice and demand, and the provisions relating to claims and suits for refund) as in the case of a deficiency in the tax imposed by this title, except as otherwise provided in subdivision (g) of this section, and except that the period of limitation prescribed in section 1109 of this Act shall be applied in lieu of the period prescribed in subdivision (a) of section 310.

(e) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before that date, and if the Commissioner after June 2, 1924, but before the enactment of this Act, finally determined the amount of the deficiency, and if the person liable for such tax appealed before the enactment of this Act to the Board of Tax Appeals and the appeal is pending before the Board at the time of the enactment of this Act, the Board shall have jurisdiction of the appeal. In all such cases the powers, duties, rights, and privileges of the Commissioner and of the person who has brought the appeal, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax shall be made, in the same manner as provided in subdivision (d) of this section, except as provided in subdivision (h) of this section and except that the person liable for the tax shall not be subject to the provisions of subdivision (a) of section 319.

(f) If any deficiency in any estate tax imposed by the Revenue Act of 1917, the Revenue Act of 1918, or the Revenue Act of 1921, or by any such Act as amended, was assessed before June 3, 1924, but was not paid in full before the date of the enactment of this Act, and if the Commissioner after June 2, 1924, finally determined the amount of the deficiency, and notified the person liable for such tax to that effect less than 60 days prior to the enactment of this Act and no appeal has been filed before the enactment of this Act, the person so notified may file a petition with the Board in the same manner as if a notice of deficiency had been mailed after the enactment of this Act in respect of a deficiency in a tax imposed by this title. In such cases the 60-day period referred to in subdivision (a) of section 308 of this Act shall begin on the date of the enactment of this Act, and, whether or not the petition is filed, the powers, duties, rights, and privileges of the Commissioner and of the person who is so notified, and the jurisdiction of the Board and of the courts, shall be determined, and the computation of the tax be made, in the same manner as provided in subdivision (d) of this section.

(g) In cases within the scope of subdivision (d), (e), or (f), if the Commissioner believes that the collection of the deficiency will be jeop-

ardized by delay, he may, despite the provisions of subdivision (a) of section 308 of this Act, instruct the collector to proceed to enforce the payment of the unpaid portion of the deficiency, and notice and demand shall be made by the collector for the payment thereof. Within 30 days after such jeopardy notice and demand the person liable for the tax may obtain a stay of collection of the whole or any part of the amount included in the notice and demand by filing with the collector a bond in like manner, under the same conditions, and with the same effect, as in the case of a bond to stay the collection of a jeopardy assessment under section 312 of this Act.

(h) In cases within the scope of subdivision (b) or (e) of this section where any hearing before the Board has been held before the enactment of this Act and the decision is rendered after the enactment of this Act, such decision shall, for the purposes of this title, be considered to have become final upon the date when it is rendered and neither party shall have any right to petition for a review of the decision. The Commissioner may, within one year from the time the decision is rendered, begin a proceeding in court for the collection of any part of the amount disallowed by the Board, unless the statutory period of limitations properly applicable thereto has expired before the appeal was taken to the Board. The court shall include in its judgment interest upon the amount thereof in the same cases, at the same rate, and for the same period, as if such amount were collected otherwise than by proceeding in court. In any such proceeding by the Commissioner or in any suit by the taxpayer for a refund, the findings of the Board shall be prima facie evidence of the facts therein stated.

(i) Where before the enactment of this Act a jeopardy assessment has been made under subdivision (d) of section 308 of the Revenue Act of 1924 (whether of a deficiency in the tax imposed by Title III of such Act or of a deficiency in an estate tax imposed by any of the prior Acts enumerated in subdivision (a) of this section) all proceedings after the enactment of this Act shall be the same as under the Revenue Act of 1924 as amended by this Act, except that—

(1) A decision of the Board rendered after the enactment of this Act where no hearing has been held by the Board before the enactment of this Act may be reviewed in the same manner as provided in this Act in the case of a tax imposed by this title;

(2) Where no hearing has been held by the Board before the enactment of this Act, the Commissioner shall have no right to begin a proceeding in court for the collection of any part of the deficiency disallowed by the Board; and

(3) In the consideration of the case the jurisdiction and powers of the Board shall be the same as provided in this Act in the case of a tax imposed by this title.

(j) In the case of any estate or gift tax imposed by prior Act of Congress, in computing the period of limitations provided in section 310 or 311 of this Act on the making of assessments and the beginning of distraint or a proceeding in court, the running of the statute of limitations shall be considered to have been suspended (in addition to the period of suspension provided for in subdivision (b) of section 310) for any period prior to the enactment of this Act during which the Commissioner was prohibited from making the assessment or beginning distraint or proceeding in court.

**SEC. 319.** (a) If the Commissioner has mailed to the executor a notice of deficiency under subdivision (a) of section 308 and if the executor after the enactment of this Act files a petition with the Board of Tax Appeals within the time prescribed in such subdivision, no refund in respect of the tax shall be allowed or made and no suit for the recovery of any part of such tax shall be instituted in any court, except—

(1) As provided in subdivision (c) of this section or in subdivision (i) of section 312 or in subdivisions (b), (e), or (g) of section 318 or in subdivision (d) of section 1001; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the statutory period of limitations upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for refund or in any such suit for refund the decision of the Board which has become final, as to whether such period had expired before the notice of deficiency was mailed, shall be conclusive.

(b) All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax.

(c) If the Board finds that there is no deficiency and further finds that the executor has made an overpayment of tax, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the executor as provided in section 3220 of the Revised Statutes, as amended. Such refund shall be made either (1) if claim therefor was filed within the period of limitation provided for by law, or (2) if the petition was filed with the Board within four years after the tax was paid, or, in the case of a tax imposed by this title, within three years after the tax was paid.

**SEC. 320.** (a) Whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both.

(b) Whoever fails to comply with any duty imposed upon him by section 304, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

**SEC. 321.** (a) The term "resident" as used in this title includes a citizen of the United States with respect to whose property any probate or administration proceedings are had in the United States Court for China.

Where no part of the gross estate of such decedent is situated in the United States at the time of his death, the total amount of tax due under this title shall be paid to or collected by the clerk of such court, but where any part of the gross estate of such decedent is situated in the United States at the time of his death, the tax due under this title shall be paid to or collected by the collector of the district in which is situated the part of the

gross estate in the United States, or, if such part is situated in more than one district, then the collector of such district as may be designated by the Commissioner.

(b) For the purpose of this section the clerk of the United States Court for China shall be a collector for the territorial jurisdiction of such court, and taxes shall be collected by and paid to him in the same manner and subject to the same provisions of law, including penalties, as the taxes collected by and paid to a collector in the United States and a period.

And on page 44 of the Senate engrossed amendments, line 21, strike out "SEC. 300. (a) Section" and insert *Sec. 322. (a) Subdivision (a) of section*; and on page 46 of the Senate engrossed amendments, line 11, strike out "301" and insert *323*; and on page 47 of the Senate engrossed amendments, line 1, strike out "302" and insert *324*; and on page 48 of the Senate engrossed amendments, line 17, strike out "303" and insert *325*; and on page 48 of the Senate engrossed amendments strike out lines 21 to 23, inclusive;

And the Senate agree to the same.

Amendment numbered 108:

That the House recede from its disagreement to the amendment of the Senate numbered 108, and agree to the same with an amendment as follows:

Restore the matter proposed to be stricken out by the Senate amendment; and on page 190 of the House bill, line 12, strike out "50" and insert *75*; and on page 193 of the House bill, line 11, strike out "fairs; or" and insert *fairs* and a period; and on page 193 of the House bill strike out lines 12 to 23, inclusive; and the Senate agree to the same.

Amendment numbered 126:

That the House recede from its disagreement to the amendment of the Senate numbered 126, and agree to the same with an amendment as follows:

Restore the matter proposed to be stricken out by said amendment and on page 223 of the House bill, line 12, strike out "7" and insert *5*; and the Senate agree to the same.

Amendment numbered 127:

That the House recede from its disagreement to the amendment of the Senate numbered 127, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment insert *6*; and the Senate agree to the same.

Amendment numbered 128:

That the House recede from its disagreement to the amendment of the Senate numbered 128, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment insert *7*; and the Senate agree to the same.



## Amendment numbered 132:

That the House recede from its disagreement to the amendment of the Senate numbered 132, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

"(7) *When any distilled spirits exported free of tax and reimported in the original packages prior to January 1, 1926, are after the enactment of the Revenue Act of 1926 withdrawn from any internal-revenue bonded warehouse for tax payment or for bottling in bond, an allowance may be made for actual loss by leakage or evaporation not exceeding one proof gallon as to each cask or package of a capacity of not less than 40 wine gallons for each period of six months or fraction thereof from the date of official regauge after reimportation, and such distilled spirits may be bottled in accordance with the provisions of the Act of March 3, 1897, entitled 'An Act to allow the bottling of distilled spirits in bond,' as amended. The allowance for losses provided in this paragraph shall be made subject to the conditions of section 50 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,' as amended.*"

And the Senate agree to the same.

## Amendment numbered 141:

That the House recede from its disagreement to the amendment of the Senate numbered 141, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the said amendment insert the following:

"(b) *The terms of office of all members who are to compose the Board prior to June 2, 1926, shall expire at the close of business on June 1, 1926. The terms of office of the sixteen members first taking office after such date shall expire, as designated by the President at the time of nomination, four at the end of the sixth year, four at the end of the eighth year, four at the end of the tenth year, and four at the end of the twelfth year, after June 2, 1926. The terms of office of all successors shall expire twelve years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor and a period.*

And the Senate agree to the same.

## Amendment numbered 146:

That the House recede from its disagreement to the amendment of the Senate numbered 146, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment insert *The mailing by registered mail of any pleading, order, notice, or process in respect of proceedings before the Board shall be held sufficient service of such pleading, order, notice, or process and a period; and the Senate agree to the same.*

## Amendment numbered 150:

That the House recede from its disagreement to the amendment of the Senate numbered 150, and agree to the same with an amendment as follows:

On page 58 of the Senate engrossed amendments strike out lines 14 to 26, inclusive, and insert in lieu thereof the following:

*Sec. 1001. (a) The decision of the Board rendered after the enactment of this Act (except as provided in subdivision (j) of section 283 and in subdivision (h) of section 318) may be reviewed by a Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, as hereinafter provided, if a petition for such review is filed by either the Commissioner or the taxpayer within six months after the decision is rendered and a period.*

And on page 59 of the Senate engrossed amendments, line 2, after "petition" insert a comma and the following: *the preparation of the record for review* and a comma; and on page 59 of the Senate engrossed amendments, line 6, strike out "section 274" and insert *sections 274 and 308*; and on page 59 of the Senate engrossed amendments, line 21, strike out "Title II"; and on page 59 of the Senate engrossed amendments, line 22, after "274" insert *or subdivision (d) of section 308*;

And the Senate agree to the same.

## Amendment numbered 168:

That the House recede from its disagreement to the amendment of the Senate numbered 168, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by said amendment insert:

*Sec. 1101. The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act and a period.*

And the Senate agree to the same.

## Amendment numbered 170:

That the House recede from its disagreement to the amendment of the Senate numbered 170, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate Amendment insert:

*SEC. 1106. (a) The bar of the statute of limitations against the United States in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no credit or refund in respect of such tax shall be allowed unless the taxpayer has overpaid the tax. The bar of the statute of limitations against the taxpayer in respect of any internal-revenue tax shall not only operate to bar the remedy but shall extinguish the liability; but no collection in respect of such tax shall be made unless the taxpayer has underpaid the tax and a period.*

And the Senate agree to the same.

**Amendment numbered 172:**

That the House recede from its disagreement to the amendment of the Senate numbered 172, and agree to the same with an amendment as follows:

On page 63 of the Senate engrossed amendments, lines 15 and 16, strike out "277 and 278" and insert 277, 278, 310, and 311; and the Senate agree to the same.

**Amendment numbered 173:**

That the House recede from its disagreement to the amendment of the Senate numbered 173, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert sections 284 and 319; and the Senate agree to the same.

**Amendment numbered 174:**

That the House recede from its disagreement to the amendment of the Senate numbered 174, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert sections 284 and 319; and the Senate agree to the same.

**Amendment numbered 177:**

That the House recede from its disagreement to the amendment of the Senate numbered 177, and agree to the same with an amendment as follows:

On page 65 of the Senate engrossed amendments, line 10, strike out "knowingly and"; and the Senate agree to the same.

**Amendment numbered 191:**

That the House recede from its disagreement to the amendment of the Senate numbered 191, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert sections 283 and 318; and the Senate agree to the same.

**Amendment numbered 193:**

That the House recede from its disagreement to the amendment of the Senate numbered 193, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

(b) *There shall be in the Bureau of Internal Revenue the following officers who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such duties as may be prescribed by the Commissioner or required by law:*

(1) *Four Assistant General Counsel each of whom shall receive a salary at the rate of \$8,000 per annum.*

(2) *One Assistant to the Commissioner who shall receive a salary at the rate of \$8,000 per annum. The office of Assistant to the Commissioner provided by existing law is abolished to take effect at such time as the Assistant to the Commissioner first appointed under this section takes office.*

(3) *One Special Deputy Commissioner who shall receive a salary at the rate of \$7,500 per annum and a period.*

And the Senate agree to the same.

## Amendment numbered 194:

That the House recede from its disagreement to the amendment of the Senate numbered 194, and agree to the same with an amendment as follows:

On page 71 of the Senate engrossed amendments strike out lines 17 to 25, inclusive, and lines 1 to 6, inclusive, on page 72, and insert the following:

(c) *It shall be the duty of the Joint Committee—*

(1) *To investigate the operation and effects of the Federal system of internal-revenue taxes;*

(2) *To investigate the administration of such taxes by the Bureau of Internal Revenue or any executive department, establishment, or agency, charged with their administration;*

(3) *To make such other investigations in respect of such system of taxes as the Joint Committee may deem necessary;*

(4) *To investigate measures and methods for the simplification of such taxes, particularly the income tax;*

(5) *To publish, from time to time, for public examination and analysis, proposed measures and methods for the simplification of such taxes, and to make to the Senate and the House of Representatives, not later than December 31, 1927, a definite report thereon, together with such recommendations as it may deem advisable; and*

(6) *To report, from time to time, to the Committee on Finance and the Committee on Ways and Means and, in its discretion, to the Senate or the House of Representatives, or both, the results of its investigations, together with such recommendations as it may deem advisable and a period.*

And on page 72 of the Senate engrossed amendments, line 13, strike out "shall" and insert *may*;

And on page 73 of the Senate engrossed amendments, after line 8, insert the following:

(g) *The members shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Joint Committee, other than expenses in connection with meetings of the Joint Committee held in the District of Columbia during such times as the Congress is in session and a period.*

And on page 73 of the Senate engrossed amendments, line 9, strike out "(g)" and insert (h);

And the Senate agree to the same.

## Amendment numbered 198:

That the House recede from its disagreement to the amendment of the Senate numbered 198, and agree to the same with an amendment as follows:

On page 74 of the Senate engrossed amendments, line 1, strike out all after "1921," down to and including "basis," in line 3; and the Senate agree to the same.

Amendment numbered 204:

That the House recede from its disagreement to the amendment of the Senate numbered 204, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

**COMMUNITY PROPERTY**

*SEC. 1212. Income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. Any spouse who elected so to return such income shall not be entitled to any credit or refund on the ground that such income should have been returned by the other spouse and a period.*

And the Senate agree to the same.

Amendment numbered 205:

That the House recede from its disagreement to the amendment of the Senate numbered 205, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert 1213; and the Senate agree to the same.

Amendment numbered 206:

That the House recede from its disagreement to the amendment of the Senate numbered 206, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert 1214; and the Senate agree to the same.

W. R. GREEN,  
ALLEN T. TREADWAY,  
ISAAC BACHARACH,  
JNO. N. GARNER,  
J. W. COLLIER,

*Managers on the part of the House.*

REED SMOOT,  
GEO. P. MCLRAN,  
DAVID A. REED,  
F. M. SIMMONS,  
PETER G. GERRY,

*Managers on the part of the Senate.*

## STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 1) to reduce and equalize taxation, to provide revenue, and for other purposes, submit the following written statement in explanation of the effect of the action agreed upon by the conferees and recommend in the accompanying conference report:

**Amendment No. 1:** It has been contended that under existing law a corporation, especially one which has only a few stockholders, might without resorting to the device of a stock dividend be able to make a distribution to its stockholders which would have the same effect as a taxable dividend. For example, assume that two men hold practically all the stock of a corporation for which each had paid \$50,000 in cash, and the corporation had accumulated a surplus of \$50,000 above its cash capital. It is claimed that under existing law the corporation could buy from the stockholders for cash one-half of the stock held by them and cancel it without making the stockholders subject to any tax, yet this action in all essentials would be the equivalent of a distribution through cash dividends of the earned surplus. Section 201(g) of the House bill rewrites the provision of the existing law to make clear that such a transaction as above indicated is taxable. Obviously this subdivision does not apply in cases of a complete liquidation of all the stock of the corporation, or to one of a series of distributions in a complete liquidation which is bona fide carried out. This amendment provides that in the case of the cancellation or redemption of stock not issued as a stock dividend this subdivision shall apply only if the cancellation or redemption is made after January 1, 1926; and the House recedes.

**Amendment No. 2:** In computing the gain or loss from the sale or other disposition of property section 202(b) (2) requires the cost or March 1, 1913, basis to be diminished by the amount of exhaustion, wear and tear, obsolescence, amortization, and depletion which has since the acquisition of the property been allowable in respect of such property under this or prior income tax laws, and provides that in no case shall the amount of the diminution in respect of depletion exceed the depletion deduction computed without reference to discovery value. In view of the fact that paragraph (2) of subdivision (c) of section 204 changes the depletion deduction from the appraisal basis under existing law to a percentage of the gross income, the Senate amendment specifically provides that in no case shall the amount of diminution in respect of depletion exceed a depletion deduction computed without reference to paragraph (2) of subdivision (c) of section 204; and the House recedes.

**Amendment No. 3:** The existing law provides in section 203 (c) that if on a reorganization there is distributed to the shareholders stock or securities in a corporation a party to the reorganization no gain to the distributee from such receipt shall be recognized. This amendment broadens this provision and provides that where one

corporation owns at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation and distributes such stock to such shareholders then no gain to the distributee shall be recognized even though there is no reorganization. The Senate recedes.

Amendments Nos. 4 and 5: These amendments make clerical changes; and the Senate recedes.

Amendment No. 6: The House bill provides that in the case of oil and gas wells discovered by the taxpayer on and after January 1, 1925, in an area not proven at the date of such discovery, where the fair market value of the property is materially disproportionate to cost, the basis for depletion shall be the fair market value at the date of discovery or within 30 days thereafter of the property proven by such discovery and included within the taxpayer's tracts or leases. It also provides that in the case of oil or gas wells, each well producing oil or gas in commercial quantities shall be considered as having proven at least that portion of the productive sand, zone, or reservoir which is included in the square surface area of 160 acres having as its center the mouth of such well. It further provides that in case two or more persons enter into an agreement whereby the cost of the well shall be shared if oil or gas in commercial quantities is not found, such well shall not be considered as having proven any part of the tract or lease held by such other persons. The discovery depletion deduction limitation of an amount not in excess of 50 per cent of the net income of the taxpayer from the property upon which the discovery was made, provided in existing law, is retained in this provision.

The Senate amendment makes only one basic change in the discovery depletion provision of existing law so far as such provision relates to mines: It provides that discoveries shall include minerals in commercial quantities contained within a vein or bed discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or bed thus discovered was not merely the extension of a continuing vein or bed already known to exist and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

The administration of the discovery provision of existing law in the case of oil and gas wells has been very difficult because of the discovery valuation that had to be made in the case of each discovered well. In the interest of simplicity and certainty in administration the Senate amendment provides that in the case of oil and gas wells the allowance for depletion shall be 30 per cent of the gross income from the property during the taxable year. The provision of existing law limiting this amount to an amount not in excess of 50 per cent of the net income of the taxpayer from the property is retained.

The House recedes with an amendment providing that the depletion deduction based upon gross income in the case of an oil and gas well shall be 27½ per cent of that income instead of 30 per cent, and in the case of mines the Senate amendment is changed to provide that discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or deposit thus discovered was not merely the

uninterrupted extension of a continuing commercial vein or deposit already known to exist and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

Amendment No. 7: In computing the net loss deduction the existing law and the House bill provide that the deduction for depletion shall not exceed the amount which would be allowable if computed without reference to discovery value. Inasmuch as the depletion deduction in the case of oil and gas wells is to be based upon a percentage of gross income instead of discovery value, as provided in section 204(c), this amendment provides that in computing net losses the deduction for depletion shall not exceed the amount which would be allowable if computed without reference to section 204(c) (2); and the House recedes.

Amendment No. 8: This amendment makes a clerical change which is necessary because of the action taken with regard to amendment No. 25; and the House recedes.

Amendment No. 9: This amendment makes a clerical change; and the House recedes.

Amendment No. 10: The 12½ per cent capital gain and loss provisions apply only to the sale or exchange of capital assets which have been held by the taxpayer for two years. This amendment provides that in determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain is recognized to the distributee under section 203(c) of this bill or the revenue act of 1924, there shall be included the period for which he held the stock or security in the distributing corporation. Inasmuch as section 203(c) in this bill and in the revenue act of 1924 is broad enough to include the case of stock dividends, this amendment takes care of the determination of the two-year period in the case of stock dividends as to which the present Treasury regulations apply the same rule; and the House recedes.

Amendment No. 11: This amendment is a minor clarifying amendment; and the House recedes.

Amendments Nos. 12, 13, 14, and 15: The Senate amendment reduced the estimated revenues from surtaxes \$20,500,000 by reducing the surtax rates on the intermediate brackets of incomes between \$24,000 and \$70,000; and the House recedes.

Amendment No. 16: The Commissioner of Internal Revenue, in pursuance of his authority to accept and define the accounting methods which clearly reflect income, has for a number of years recognized the installment basis of accounting, but prior revenue acts have not defined the transactions or businesses to which the installment method of computing income might be applied. This amendment writes into the bill the basic principles of the installment method authorized by prior regulations. It provides that under regulations prescribed by the commissioner with the approval of the Secretary a person who regularly sells or otherwise disposes of personal property on the installment plan may return in his income therefrom in any taxable year that proportion of the installment payments actually received in that year which the total profit realized or to be realized when the payment is completed bears to the total contract price. In the case of casual sales of personal property or of the sale or other casual disposition of real property if in either case the initial payments do not



exceed one-fourth of the purchase price, the commissioner with the approval of the Secretary is authorized to make regulations so that the income from such transactions may be returned on the basis and in the manner above prescribed. If the taxpayer chooses, as a matter of settled practice, to treat an entire transaction as completed in the year in which the sale is made, it is intended that he shall have a right to make a return for the whole profit realized or to be realized from the entire transaction as income for the year in which the sale is made; and the House recedes with a clarifying amendment.

Amendment No. 17: Under existing law, the proceeds of life insurance policies "paid upon the death" of the insured are exempt. The House bill, in order to prevent any interpretation which would deny the exemption in the case of installment payments, amended this provision so that proceeds "paid by reason of the death" of the insured would be exempt. In order to prevent an exemption of earnings where the amount payable under the policy is placed in trust upon the death of the insured and the earnings thereon paid, the Senate amendment provides specifically that such payments shall be included in gross income.

Under existing law a return of premiums paid under a life insurance, endowment, or annuity contract is exempt only when returned to the insured. The Senate amendment grants to the various persons to whom the payments are made an exemption of an amount equal to their proportionate shares of the premiums paid. In the case of an assignment for valuable consideration, the exemption provided in the amendment is limited to the consideration and the premiums paid by the assignee; and the House recedes with an amendment, making a clerical change.

Amendment No. 18: The House bill provides that the value of property acquired by gift, bequest, devise, or descent shall be exempt from tax. The amendment changes the word "descent" to "inheritance" as more appropriately including both real and personal property; and the House recedes.

Amendment No. 19: The House bill provides that there shall be excluded from gross income in cases of our citizens employed abroad in selling our merchandise amounts received as salary or commission for the sale for export of tangible personal property produced in the United States in respect of such sales made while actually employed outside the United States, if so employed for more than six months during the taxable year. The Senate amendment strikes out this provision and substitutes one providing that there shall be excluded from gross income in the case of an individual citizen of the United States, a bona fide nonresident for more than six months during the taxable year, amounts derived and received from business conducted without the United States. The House recedes with an amendment which provides in the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the year, there shall be excluded from gross income items of income received from sources without the United States which are classified as "earned income" under section 209.

Amendment No. 20: This amendment grants an exemption from taxation under the revenue act of 1924 to January 1, 1925, and under prior revenue acts of amounts heretofore received by officers or

employees of any State or political subdivision thereof as compensation for personal services in such office or employment (except to the extent that such compensation is paid by the United States Government directly or indirectly), and provides for refund of any taxes that have been paid upon such incomes prior to January 1, 1925, if the statutory period for the refunding of such taxes has not expired; and the House recedes with an amendment transferring this provision to another place in the bill as section 1211.

Amendment No. 21: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 22: This amendment restores the language of existing law omitted in the House bill by reason of the insertion in the House bill of section 214(c) which later subdivision is stricken out by amendment 25; and the House recedes.

Amendment No. 23: The existing law allows depreciation as a deduction. This amendment makes it clear that in the case of improved real estate held by one person for life with remainder to another, the depreciation deduction shall be equitably apportioned between the life tenant and the remainderman; and the House recedes.

Amendment No. 24: It is claimed that occasionally real property is sold under contracts by others than dealers in such property which require the vendor to put in water system, sewers, streets, and to make other expenditures which can not be determined at the time of sale, and that unless such a vendor is allowed to take a deduction for such expenditure against the gain from the sale, he may not have sufficient income in future years to write such expenditures off against. This amendment proposes in such cases to permit such a taxpayer to take a deduction for such future expenses in the year in which the transaction is closed. However, it authorized the commissioner to require such taxpayer to furnish a bond in a sum not less than the estimated tax liability computed without the benefit of this deduction, conditioned upon the payment of the tax computed without the benefit of this deduction in respect of any amounts allowed as a deduction under this paragraph and not actually expended in carrying out the provisions of such contract. The House recedes with clarifying amendments and with an amendment making another condition of the bond that the taxpayer will pay the tax notwithstanding any statute of limitations.

Amendment No. 25: The House bill provided for the deduction of all interest paid or accrued within the taxable year on indebtedness but limited the deduction in the case of interest on nonbusiness indebtedness to the excess over tax exempt interest received. The Senate amendment strikes out this provision; and the House recedes.

Amendment No. 26: This amendment makes a clerical change; and the House recedes.

Amendment No. 27: The revenue act of 1924 provided that gains derived from the purchase of personal property within and its sale without the United States, or from the purchase of personal property without and its sale within the United States, should be treated as derived entirely from sources within the country in which sold. Porto Rico, for example, taxes the income from the sale of its tobacco in the United States and the United States also taxes the income from such sale. The result is that income taxes are imposed upon 200 per

cent of such income. The House bill permits the allocation of income from such transaction between the United States and its possessions for the purpose of the imposition of income taxes. The Senate amendment struck out this provision, the effect of which would be to leave the provisions of existing law in effect; and the Senate recedes.

Amendment No. 28: The existing law is not clear concerning the proper method of taxing trusts created by an employer as part of a pension fund established for the exclusive benefit of his employees. Such pension funds are similar to the stock bonus and profit-sharing plans covered by subdivision (f) of section 219, and this amendment applies to such pension funds the clear and definite method of taxation heretofore applied to stock bonus and profit-sharing plans; and the House recedes.

Amendment No. 29: The early practice of the Treasury Department permitted a grantor of a revocable trust to include the income and losses of the trust in his tax return. Later the Treasury Department reached the conclusion that this practice was invalid. The effect of this decision is to necessitate the imposition of additional taxes upon certain grantors of such trusts who had taken the losses of the trust in computing their net income. This amendment proposes the validation of the earlier practice as applied to all the tax years from 1919 to 1923, inclusive; and the Senate recedes.

Amendment No. 30: The existing law in the case of corporations formed or availed of for the purpose of preventing the imposition of the surtax by failure to distribute the earnings imposes upon the net income of such corporations a tax of 50 per cent in addition to the regular corporation income tax. This amendment provides that this tax shall not apply in any year if all the stockholders include in their gross income and pay surtax upon their entire distributive share, whether distributed or not, of the earnings of the corporation for such year. If the surtax is thus paid, failure to distribute the earnings has not resulted in any avoidance of tax, and the reason for the imposition of the 50 per cent tax on the corporation no longer exists. The amendment also provides that upon any subsequent distribution by the corporation out of its earnings and profits for the year in which the shareholders have thus paid the surtax the amounts distributed to the shareholder who paid the tax upon his distributive share shall be exempt from tax. The House recedes with an amendment specifically providing that the 50 per cent tax imposed shall not apply if the shareholders include their distributive share, whether distributed or not, in their gross income at the time of filing their returns.

Amendment No. 31: This amendment provides that a debtor corporation having outstanding tax-free covenant bonds shall be required to withhold at the rate of  $1\frac{1}{2}$  per cent instead of 2 per cent in all cases in which the bondholder advises the debtor corporation that his net income for the taxable year in excess of the credits provided in section 216 does not exceed \$4,000. This provision is necessary to eliminate the necessity of the debtor corporation withholding tax at a greater rate than the holder of the bonds will have to pay, in view of the fact that the first \$4,000 of a taxpayer's net income in excess of his credit provided in section 216 is taxable at the rate of  $1\frac{1}{2}$  per cent; and the House recedes.

**Amendment No. 32:** This amendment makes a clerical change; and the House recedes.

**Amendment No. 33:** The House bill imposed a corporation income tax of 12½ per cent. The Senate bill eliminated the capital stock tax on corporations and this amendment increased the corporation income tax to 13½ per cent. The House recedes from its disagreement to the corporation income tax amendment with an amendment imposing a tax for the calendar year 1925 at the rate of 13 per cent and for each calendar year thereafter of 13½ per cent. Provision is also made that in the case of a taxpayer whose taxable year is the calendar year and who elects to pay his tax in installments for the calendar year 1925, the amount of the first and second installments shall each equal 24 per cent of the tax, and the amount of the third and fourth installments shall each equal 26 per cent of the tax.

**Amendment No. 34:** This amendment provided that complete exemption from income tax should be granted to mutual dairy loan associations substantially all the business of which is confined to making loans to members; and the Senate recedes.

**Amendment No. 35:** In the United States there are numerous organizations composed of individuals, partnerships, and corporations designated as subscribers operating as interindemnity or reciprocal insurance companies organized on a premium deposit plan through an attorney in fact, for the purpose of insuring against loss by fire and other casualty. The attorney in fact is authorized to bind the particular parties thereto under the name designating the particular group of subscribers. No premiums are charged for policies, but each subscriber makes certain deposits with the attorney in fact for the purpose of securing his undertaking to indemnify the other subscribers. There is usually an advisory committee of a specified number of persons who have custody of the funds deposited by the subscriber. The Treasury Department now holds that such interinsurers and reciprocal underwriters are exempt from tax under the provisions of subdivision (10) of section 231 of the revenue act of 1924 if the income tax of such interinsurers and reciprocal underwriters from investments is not in excess of 15 per cent of the total income of the organization. This amendment gives a complete exemption to such organizations if their income is used or held for the purpose of paying losses or expenses; and the House recedes.

**Amendment No. 36:** The existing law, strictly construed, allows exemption only to those farmers', fruit growers', or like associations which act as sales or purchasing agents for producer members and which return to such members the entire proceeds of their operations except necessary sales or purchasing expenses. However, in order that any such association not operated for profit and which is a true cooperative association shall get the benefit of this exemption, the Treasury Department in its regulations has construed the existing law with great liberality, enlarging the term "member" to mean any producer, whether a member or not, if treated by such an association on the same basis as a member; exempting such an association not acting as an agent, but taking title to products or supplies; allowing such an association to have outstanding capital stock and to pay dividends on such stock (subject to certain limitations); permitting such an association to build up reserves for State requirements or other necessary purposes; and allowing such an association to manu-

facture its products, to change the form of raw materials, and in some cases to operate subsidiaries, so long as the operations are not conducted on an ordinary profit-making basis. The House bill reenacted existing law. This amendment does not broaden the scope nor even include all of the provisions of the Treasury regulations, but only incorporates certain provisions adopted by the department as fundamental in allowing exemptions to cooperative marketing and purchasing associations. The amendment assures such associations, now exempt, that the liberal construction by the department of existing law is sanctioned by Congress, and will prevent a restriction upon the present exemptions, such as is now possible under existing law. The amendment exempts not only the association acting as a sales or purchasing agent but any association organized and operated on a cooperative basis, and specifically includes other producers as well as member producers. A capital-stock association is not to be denied exemption if substantially all the stock, other than nonvoting preferred stock, is owned by producers marketing or purchasing through the association; if its annual dividend rate is limited so as not to exceed the legal rate of interest in the State of incorporation or 8 per cent (whichever is greater) of the value of the consideration for which the stock was issued; or if it accumulates and maintains a reserve required by State law, or for any necessary purpose. The amendment permits an association to market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members; and to purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, if the value of the purchases made for persons who are neither members nor producers does not exceed 15 per cent of the value of all its purchases; and the House recedes with a clarifying amendment.

Amendment No. 37: This amendment makes the installment basis provided in subdivision (d) of section 212 applicable to corporations to the same extent as in the case of individuals; and the House recedes.

Amendment No. 38: This amendment adds two paragraphs to subdivision (a) of section 234, and sets forth additional deductions proposed to be allowed in computing net income in the case of lands managed for the production of crops of timber; and the Senate recedes.

Amendment No. 39: This amendment requires the withholding of a tax of  $12\frac{1}{2}$  per cent in respect of all payments of income made before the enactment of this act and  $13\frac{1}{2}$  per cent in respect of such payments made after the enactment of this act to foreign corporations specified below. In view of the fact that the corporation income tax rate has been increased to  $13\frac{1}{2}$  per cent, it is necessary to amend the withholding provision to require the withholding in the case of foreign corporations subject to the income tax and not engaged in trade or business within the United States, and not having any office or place of business therein, at the rate of  $13\frac{1}{2}$  per cent. Because the persons making payments to such corporations during the calendar year 1925 and the early part of 1926 had no notice that the corporation income tax would be increased, the withholding rate is not increased with respect to payments made before the enactment of this act; and the House recedes.

Amendment No. 40: This amendment makes a clerical change; and the House recedes.

Amendments Nos. 41 and 42: Under the House bill two or more domestic corporations are permitted to file a consolidated return if one corporation owns at least 95 per cent of the voting stock of its subsidiary or subsidiaries, or if at least 95 per cent of the voting stock of two or more corporations is owned by the same interests. The Senate amendment strikes out "voting" and requires that (1) a corporation must own at least 95 per cent of all the stock of its subsidiary or subsidiaries or (2) 95 per cent of all the stock of two or more corporations must be owned by the same interests. The House recedes with an amendment leaving the existing law relative to affiliations in effect for the taxable year 1925 and providing the following rule for affiliation for the taxable year 1926 and succeeding years:

"Two or more domestic corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per cent of the stock of the other or others, or (2) if at least 95 per cent of the stock of two or more corporations is owned by the same interests."

The term "stock" as used in this rule does not include nonvoting stock which is limited and preferred as to dividends.

Amendment No. 43: This amendment makes a clerical change; and the House recedes.

Amendment No. 44: The House bill provided that domestic life insurance companies should pay the same percentage of their net income as imposed upon other corporations by section 230. The Senate amendment provides that these insurance companies should pay a tax of 12½ per cent of their net income instead of the 13½ per cent imposed by the Senate bill upon other corporations. The extra 1 per cent tax was imposed by the Senate bill on other corporations as a substitute for the capital stock tax which was repealed by the Senate bill. A life insurance company is not subject to the capital stock tax and there is, therefore, no reason why it should be subjected to an increased income tax. The House recedes.

Amendment No. 45: The Senate amendment makes a corresponding change to the one made by amendment No. 44, making the tax on foreign life insurance companies 12½ per cent of their net income from sources within the United States. The House recedes.

Amendment No. 46: This amendment makes a clerical change; and the House recedes.

Amendments Nos. 47 and 48: These amendments make the rate of tax on insurance companies other than life or mutual insurance companies 12½ per cent, for the reasons explained in connection with amendment No. 44. The House recedes.

Amendment No. 49: This amendment is a clerical change made necessary by amendment No. 194; and the House recedes.

Amendment 50: This amendment authorizes the commissioner to furnish certified copies of certain income-tax returns upon the payment of a reasonable fee to be fixed by him. The House recedes with an amendment specifically providing that the commissioner may furnish certified copies of returns to persons who are entitled to inspect the same, and provides that in the discretion of the commissioner a reasonable fee may be charged for the same.

Amendments Nos. 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67, and 68: The House bill provides for the payment of income tax "on or before"

the 15th day of certain months, dependent upon the citizenship and residence of the taxpayer and whether or not the return is filed on the basis of a fiscal or calendar year. These amendments prescribe the 15th day of such month as the definite date for the payment of the tax, but Amendment No. 60 permits the taxpayer at his election to pay the tax at any time before such fixed date. In other parts of the bill references are made at various places to "the date prescribed for the payment of the tax" and these amendments assure certainty as to that date; and the House recedes.

Amendments Nos. 61 and 62: These amendments make clerical changes; and the House recedes.

Amendment No. 63: This amendment rewrites subdivisions (a) to (h), inclusive, of section 274 of the House bill.

Subdivision (a). This subdivision provides that, with enumerated exceptions, the commissioner can take no action to assess or collect by distraint or proceedings in court a deficiency in an income tax imposed by the new act until he has mailed to the taxpayer notice of the deficiency, nor, if the taxpayer has filed a petition with the Board of Tax Appeals for a redetermination of the deficiency, until the decision of the board has become final. Such prohibition does not, of course, bar proceedings by way of counterclaim by the commissioner for the amount of the deficiency in connection with any claim or suit for refund by the taxpayer; nor by reason of the specific exception of section 282 does the prohibition bar filing of claims by the commissioner for the amount of a deficiency in connection with bankruptcy or receivership proceedings. This subdivision also provides that, despite section 3224 of the Revised Statutes (which prohibits an injunction to restrain assessment or collection of the tax), the taxpayer may in a proper case go into court for an injunction to restrain the commissioner from assessing or collecting a deficiency until the procedure outlined in the bill has been completed.

The Senate amendment adds a provision making the return of the taxpayer *prima facie* evidence of its correctness. This provision, which apparently is intended to shift the burden of proof, in proceedings before the board, from the taxpayer to the commissioner, is omitted by the section as agreed to by the conferees. Under the existing law and under the bill as agreed to in conference the burden of proof in proceedings before the board is on the taxpayer.

The Senate amendment also provides that the commissioner shall not declare a deficiency until he has given the taxpayer notice of the deficiency and afforded him opportunity to explain the alleged deficiency. This provision is omitted by the action of the conferees on the ground that other provisions of the bill afford the taxpayer adequate opportunity for a hearing before the assessment is made. The present practice of the department is to give the taxpayer an opportunity for hearing in the bureau before a 60-day letter is sent out, and there is no reason for believing that this practice will be discontinued.

The House bill authorized the taxpayer to file a petition with the Board of Tax Appeals within 60 days after the deficiency letter was mailed. The Senate amendment excludes from the computation of the 60-day period Sundays and legal holidays in the District of Columbia. Under the action of the conference committee, Sundays and holidays are to be counted like any other days, but if the sixtieth day falls on Sunday, the petition may be filed on the sixty-first day.

Subdivision (b). This subdivision in the Senate amendment is identical with the House bill.

Subdivision (c). This subdivision is substantially the same as under the House bill.

Subdivision (d). This subdivision of the House bill provided for the making of jeopardy assessments. The Senate amendment strikes out this subdivision for reasons explained in connection with amendment numbered 86, and inserts a provision authorizing the taxpayer, by signed notice in writing, to waive the restrictions placed upon the commissioner by subdivision (a) on assessment and collection of the deficiency. The Senate amendment also contains a sentence providing that such waiver shall not bar the taxpayer from receiving a refund if the final decision of the board determines an overpayment of tax. This sentence is omitted in the bill as agreed to in conference as being surplusage.

Subdivision (e). Under the House bill the board is authorized to determine that the deficiency is greater than that contained in the deficiency letter, whether or not claim to that effect is asserted by the commissioner at or before the hearing. The Senate amendment gives this authority to the board only if claim therefor is asserted by the commissioner at or before the hearing or a rehearing. The House agrees to this amendment. The House bill also contains a clause providing that the board shall by rules prescribe under what conditions and at what times the commissioner may assert a greater deficiency than that contained in the deficiency letter. The Senate amendment strikes out this clause as surplusage (the board having this right under its general powers to prescribe rules), and the House agrees to this amendment.

Subdivision (f). The House bill provides that if after the enactment of this act the commissioner has sent a 60-day letter, he shall have no right to determine any additional deficiency, except in certain enumerated cases. Under the Senate amendment this limitation is placed on the commissioner only where the taxpayer has filed a petition with the board within the 60-day period after the mailing of the notice. The House concurs in this amendment.

Subdivisions (g) and (h). These subdivisions are the same as in the House bill.

The House recedes on amendment 63 with amendments making the changes above referred to.

Amendment No. 64: This amendment makes a change in reference to a section number and the House recedes.

Amendment No. 65: This amendment provides that the 6 per cent interest on a deficiency in cases where the taxpayer has waived the restriction placed on the commissioner by subdivision (a) shall run up to the thirtieth day after the filing of such waiver or to the day the deficiency is assessed, whichever is the earlier. The House recedes.

Amendment No. 66: This amendment gives a taxpayer a right to have his deficiency determined by the district court in lieu of the Board of Tax Appeals before the assessment of any tax and requires the taxpayer to file a sufficient bond to cover any deficiency that may be determined. The amendment also provides that in such cases no distraint or proceedings can be instituted by the commissioner. It is believed that the taxpayer's right to file a petition with the board to



have his deficiency determined before assessment is adequate and in the interest of uniformity; and the Senate recedes.

Amendments Nos. 67 and 68: These amendments have been explained in connection with amendment No. 51. The House recedes.

Amendment No. 69: The House bill retained the existing law and provided that in the case of estates of incompetent, deceased, and insolvent persons there should be collected interest at the rate of 6 per cent a year in lieu of interest at the rate of 1 per cent a month for delinquencies in payment of taxes.

Under the existing law there is considerable doubt whether the reduced rate of interest provided is applicable only to cases where the tax is imposed upon the estate, or also includes cases where an estate is called upon to pay interest for the period before the estate came under the control of the fiduciary, for example, if notice and demand is made upon the taxpayer, and he is delinquent in payment, and dies, can there be collected out of the estate interest at the rate of 1 per cent a month down to the time of his death? Under the existing law there is also the difficulty of determining with accuracy the time when a person becomes incompetent or insolvent. The Senate amendment met the above difficulties by providing that the reduced interest rates should cover only the period when the property is under the control of a fiduciary appointed by order of any court of competent jurisdiction or by will. The House recedes.

Amendments Nos. 70 and 71: These amendments make clerical changes dependent upon the action taken in connection with amendment No. 86, and the House recedes.

Amendments Nos. 72 and 74: Under the House bill income taxes imposed by the new act must be assessed within 4 years after the return is filed. The Senate amendments change this to 2 years, and the House recedes on amendment No. 74, and recedes on amendment No. 72 with an amendment making the period 3 years.

Amendment No. 73: This amendment makes a change in paragraph number, and the House recedes.

Amendment No. 74: This amendment has been explained in connection with amendment No. 72. The House recedes.

Amendment No. 75: The House bill in section 277 (a) provides that "except as provided in section 278" no proceeding in court for the collection of income, excess-profits, and war-profits taxes imposed by the Revenue Acts of 1921 and 1924, shall be begun after the expiration of 4 years after the return was filed. Section 278 of the House bill provided that where the assessment was made within the 4 years a proceeding in court may be begun at any time within 6 years after the assessment. The Senate amendment clarifies the House bill by making it clear that the prohibition of the House bill on proceedings in court after the 4-year period is limited to proceedings in court "without assessment," which was the legal effect of the House bill before the amendment. The House recedes.

Amendment No. 76: This amendment makes a change in paragraph number, and the House recedes.

Amendment No. 77: This is an amendment having the same purpose as amendment No. 75, and the House recedes.

Amendment No. 78: This amendment makes a change in paragraph number, and the House recedes.

Amendment No. 79: This is an amendment having the same purpose as amendment No. 75, and the House recedes.

Amendments Nos. 80, 81, and 82: These amendments make changes in paragraph numbers, and the House recedes.

Amendment No. 83: The House bill provided that the running of the statute of limitations on the assessment and collection of a deficiency should be suspended for the period during which, under the provisions of the income tax title, the commissioner is prohibited from making the assessment or collection. The Senate amendment suspends the running of the statute for the period during which, for any reason, the commissioner's hands are tied, and in addition assures him a period of at least 60 days after he is free in which to make the assessment or bring proceedings for collection. The House recedes.

Amendment No. 84: The House bill provided that in case of a false or fraudulent return with intent to evade tax, or of failure to file return, the tax may be assessed at any time. The Senate amendment provides that this may be done "notwithstanding any other provisions of this Act." These words are surplusage; and the Senate recedes.

Amendment No. 85: This amendment rewrites in more definite language, and correcting clerical mistakes, subdivisions (d) and (e) of section 278 of the House bill, dealing with the time within which distraint or proceeding in court may be begun after the assessment has been made. The House recedes.

Amendment No. 86: The House bill in subdivision (d) of section 274 and section 279 provided that in case the commissioner believes that the assessment or collection of the tax will be jeopardized by delay he may make a jeopardy assessment at any time before the taxpayer has taken an appeal to the Circuit Court of Appeals from the decision of the board, and that upon the making of such jeopardy assessment the jurisdiction of the board and of the courts shall cease. Under the House bill if the jeopardy assessment is made after the decision of the board is rendered but before a petition for review is filed with the Circuit Court of Appeals, it would be necessary, in order to obtain a determination by the board, to file a claim in abatement, which, when denied by the commissioner, would form the basis of a new right to take the case to the board. The Senate amendment substitutes for the system of claims in abatement of the House bill a system of jeopardy assessments which does not interfere in any manner with the regular course of procedure of deficiency letters, petitions to the board, and review of the board's decision by the Circuit Court of Appeals. Upon the making of the jeopardy assessment, the taxpayer, if he so desires, may stay the collection of the tax by filing a bond. If he does not elect to file a bond, the commissioner may collect the tax, but the right of the taxpayer to have the correct amount of the deficiency determined by the board and the appellate courts is not interfered with, and if in the course of such procedure it is decided that he has overpaid the tax a refund will be made to him. It should be observed that the board and the appellate courts have no authority to examine into the question as to whether the jeopardy determined by the commissioner in fact exists. The House recedes.

Amendment No. 87: The Senate amendment added a new section, the House bill containing no corresponding provisions. The House recedes with an amendment which is a substitute for the Senate amendment. The substitute modifies the Senate amendment in the matter of interest and the statute of limitations for assessment of

transferees. Further it omits certain unnecessary language of the Senate amendment that was merely explanatory and rephrases for purpose of clarification certain other language of the Senate amendment. As thus modified the provisions of the Senate amendment are summarized in the following paragraphs:

The amendment covers a number of situations in which by reason of the fact that the assets of the taxpayer have been disposed of in whole or in part the Government can not successfully distrain or otherwise collect the full amount of the tax originally returned or found due as a deficiency. For example:

(1) Corporation A may distribute its assets to its shareholders and thereupon either dissolve or continue undissolved.

(2) Corporation A may sell its assets to corporation B for a fair consideration either in cash or property or in stock of B. The proceeds are transmitted directly by corporation B to the shareholders of corporation A or indirectly to them through corporation A. Corporation A thereupon either dissolves or continues undissolved.

(3) Corporation A may reorganize into a partnership.

(4) Corporation A may reorganize into corporation B by a mere change of name or State of incorporation or by an amendment of the financial provisions of its charter.

(5) Corporation A may impair its capital but have what are in effect distributed assets in the form of unpaid subscriptions of its shareholders.

(6) A husband may make a gift of the whole or part of his property to his wife.

(7) Personal property of a decedent may be transferred to the beneficiaries without prior settlement of income taxes accruing during the life of the decedent or during the administration of his estate.

(8) A decedent's estate with a claim for unpaid income taxes accruing during the life of the decedent may be composed of real estate and pass directly by descent to the heirs.

By reason of the trust fund doctrine and various State statutory provisions the transferee of assets of an insolvent transferor is ordinarily liable for the accrued and unpaid taxes of the transferor. The amount of such liability is not in excess of the assets received and the transferee has a right of recoupment against other transferees of the assets of the same taxpayer, if the transferee is held liable in excess of his pro rata share of the tax liability of the transferor. Regardless of insolvency the same doctrine applies in case of the transfer of assets of a taxpayer who has died since the transfer or in the case of a corporation that has since the transfer dissolved or otherwise terminated its existence without making adequate provision for tax liabilities. Proceedings against the transferee are ordinarily had in equity, though if the taxpayer is still in existence, an unsatisfied return of execution must be had against him and a creditor's bill brought to satisfy the judgment. *Swan Land & Cattle Co. v. Frank* (148 U. S. 603).

Without in any way changing the extent of such liability of the transferee under existing law, the amendment enforces such liability (whether in respect of the tax as originally returned by the taxpayer or a deficiency therein) in the same manner as liability for a tax deficiency is enforced; that is, notice by the commissioner to the transferee and opportunity either to pay and sue for refund or else to proceed before the Board of Tax Appeals, with review by the courts.

Such a proceeding is in lieu of the present equity proceeding and is exclusive, save that, of course, in a proper case, a tax lien upon the assets arising prior to their transfer may be enforced against the transferee by distraint, or in case of real estate by a proceeding in equity. In the case where the taxpayer remains in existence after the transfer, an unsatisfied return of a distraint warrant, issued in pursuance of an assessment lawfully made after a deficiency letter has been mailed to the taxpayer, would suffice in lieu of an unsatisfied execution to establish the liability of the taxpayer.

In view of the above situation it will be seen that the amendment makes the procedure for the collection of the amount of the liability of transferees conform to the procedure for the collection of taxes. The amendment thereby substitutes the specialized and more expeditious procedure of the board for that of the district courts in equity and will develop through the board a uniformity of precedents in lieu of the present rather vague principles of law governing the liability of a transferee for unpaid taxes of a transferor.

Section 274 (a) requires notice of a deficiency in a tax to be sent the taxpayer before further proceedings for collection of the tax liability are continued. The section, however, in terms applies only to a deficiency in a tax and does not apply to the liability of a transferee in respect of the tax of the taxpayer. Therefore, in proceedings against the transferee, notice need not be given the taxpayer under section 274 (a). However, under the substitute agreed to by the conferees, the liability of the transferee is collected in the same manner as the liability for tax. Section 274 (a) is thus incorporated by reference, but the result of such reference is that for procedural purposes the transferee is treated as a taxpayer would be treated, and under section 274 (a) notice would be sent to the transferee (and not the taxpayer) in proceedings to enforce the liability of the transferee.

Under the amendment the liability of the taxpayer for the tax, including all interest and penalties, is fixed as of the time of the transfer of the assets. No further interest subsequently accrues upon such liability as assumed by the transferee, except the interest under section 276 (b) and (c) for failure to pay upon notice and demand after the outlined procedure has been completed and interest at 6 per cent a year for reimbursing the Government at the usual rate for loss of the use of the money due it.

The amendment provides that the liability of the transferee must be assessed within one year after the period for assessing the transferor has expired. The period during which the transferor may be assessed is, of course, extended under section 277 (b) by the time during which the Government is barred by pending proceedings from assessing or collecting. If the transferor is still in existence this would also include the time during which the prosecution of proceedings before the board and the court in case of future tax determinations, or before courts of equity or otherwise, in case of past tax determinations, are necessary in order to obtain judgment upon which a creditor's bill may be instituted against the transferee. The statute of limitations as to collection is covered by the incorporation by reference of section 278 (d).

The principles of the section are also applicable for the enforcement of the tort liability of fiduciaries under section 3467 of the

Revised Statutes, for distribution of an estate within their control without making adequate provision for payment of taxes due the Government.

Amendment No. 88: The Senate amendment adds a new section, the House bill containing no corresponding provisions. The Senate amendment is described as follows in the report upon the bill made to the Senate by the Finance Committee:

The term "fiduciary" is defined in section 200 (b) to mean a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person. The right of the commissioner to assess and distrain and otherwise proceed for the collection of tax depends, for instance, upon giving notice of the deficiency to and making demand upon the proper person. It, therefore, becomes necessary to make certain that there shall be some individual to whom the notice may be mailed and upon whom the demand may be made, in the case of, for example, an incompetent, a decedent's estate, or an estate in the hands of a receiver or trustee in bankruptcy.

To accomplish this purpose, the section provides that if the Commissioner of Internal Revenue has been notified as to the identity of the fiduciary, notice is to be mailed to and demand made on the fiduciary. In case the commissioner has not been notified of the fiduciary, notice is to be mailed to and demand made on the taxpayer at his last-known address. In case of a change of fiduciary, notice is to be mailed to and demand made on the last fiduciary of whom the commissioner has been notified.

Under subdivision (b) of the section the above principles are made applicable in the case of the liability of a transferee under section 280.

The House recedes with an amendment which makes merely a clerical and a minor clarifying change therein.

Amendment No. 89: The Senate amendment adds a new section, the House bill containing no corresponding provisions. The House recedes with an amendment making a clerical change. The provisions of the Senate amendment are summarized in the following paragraphs.

During bankruptcy proceedings or State or Federal receivership proceedings the assets of the taxpayer come within the control of the bankruptcy or equity court whenever the taxpayer has been finally adjudicated a bankrupt by the bankruptcy court or the receiver has been finally appointed by the equity court. If a deficiency is determined by the commissioner during the pendency of such proceedings, the amendment permits the deficiency to be assessed and the bankruptcy or receivership proceedings to continue despite the prohibitions of section 274 (a). If a petition for the redetermination of a deficiency has been filed with the board prior to the adjudication of bankruptcy or the appointment of a receiver, the amendment permits the proceedings for the redetermination of the deficiency to be continued simultaneously with the bankruptcy or receivership proceedings. The claim for the amount of the deficiency may, of course, be filed with the bankruptcy or equity court. In case of final decision of the board before termination of the bankruptcy or receivership proceedings, a copy of the decision could be filed with the bankruptcy or equity court and the decision would presumably be followed by such courts. During the pendency of the bankruptcy or receivership proceedings a deficiency may be assessed in accordance with the final decision of the board, but the amount thereof may not be collected by distraint against the assets while under the jurisdiction of the bankruptcy or equity court.

The bankruptcy and receivership proceedings do not foreclose any unsatisfied portion of the claim of the United States and such portion

may be collected by distraint or otherwise within six years after the termination of the bankruptcy or receivership proceedings. In case the final decision on appeal from the board in a proceeding for re-determination of a deficiency is reached after termination of the bankruptcy or equity proceedings, such portion of the deficiency allowed as has not already been satisfied may likewise be collected by distraint or otherwise within six years after the termination of the bankruptcy or receivership proceedings.

Interest for any period during which the estate of the taxpayer is under the control of the trustee or receiver appointed by the equity or bankruptcy court is provided at the rate of 6 per cent a year in lieu of 1 per cent a month in certain cases by sections 276 (c) and 279 (j).

Amendment No. 90: This amendment rewrites section 280 of the House bill, dealing with the procedure in the case of taxes under prior acts.

(1) *Deficiencies not assessed before passage of bill.*—Section 283 (a) provides that if after the passage of this bill the commissioner determines that any assessment should be made of any income, war-profits, or excess-profits tax imposed by the revenue act of 1916 or subsequent revenue acts (including the revenue act of 1924) the procedure to be followed shall be exactly the same as in the case of the income tax imposed by this bill, except that the amount which should be assessed shall be computed without regard to the provisions of this bill.

Subdivision (b) of the House bill provided that where before the passage of the new bill an appeal has been taken to the board under the revenue act of 1924, and the appeal is still pending, the board shall retain jurisdiction and the rights of the commissioner and the taxpayer shall be determined under the procedure outlined in the new bill, except that the taxpayer should not be barred from a suit for refund. The subdivision as rewritten by the Senate amendment excepts from the operation of the subdivision cases pending before the board in which the hearing has been held at the time of the passage of the new bill, which cases are dealt with in subdivision (j) and are discussed below in connection with that subdivision.

Subdivision (c) provides for the cases where the deficiency letter has been mailed to the taxpayer before the enactment of this bill, if the time for appeal to the board has not yet expired. In such cases he is given 60 days after the enactment of this bill to file a petition with the board. Whether or not he files his petition the respective rights and duties of the commissioner and of the taxpayer are determined in exactly the same manner as if the controversy were in respect of a tax imposed by the new bill. Thus, for example, if the taxpayer takes the case to the board and the board decides against the Government, the commissioner must take the case up to the Circuit Court of Appeals and, if necessary, to the Supreme Court before he may make any assessment. So, also, the taxpayer, if he avails himself of his right to take the case to the board, is forever barred from any claim or suit for refund in respect of the year to which the deficiency letter related.

(2) *Deficiencies assessed before passage of bill.*—Section 283 (e) covers cases where a deficiency in income, war-profits, or excess-profits taxes under the revenue acts of 1916, 1917, 1918, or 1921 was

assessed before the enactment of the revenue act of 1924, but was not paid in full before the passage of this bill, and where the commissioner, after the passage of this bill, finally determines the amount of the deficiency. In such cases the collection of the deficiency is to be made in exactly the same manner as provided for in case of income taxes imposed by this bill; that is, the commissioner can take no steps until he has sent a deficiency letter, thus giving the taxpayer an opportunity to have the case tried before the board and the appellate courts.

Subdivision (f) relates to cases like those described in the preceding paragraph but which are pending before the board at the time of the enactment of this bill. The House bill provided that the jurisdiction of the board should be preserved and the case should proceed exactly in the same manner as in the case of a tax under the new bill, except that the taxpayer should not be barred from a suit for refund. The Senate amendment makes the same exception as in the case of subdivision (b) described above.

Subdivision (g) covers the same taxes assessed before the enactment of the revenue act of 1924, where the deficiency letter has been mailed to the taxpayer before the enactment of this bill and where the 60 days for appeal to the board has not yet expired. In such cases the taxpayer is given 60 days after the enactment of the bill to take the case to the board, and, whether or not he takes advantage of this right, the case is treated the same in all respects as in the case of an income tax imposed by this bill.

(3) *Jeopardy distraint.*—Subdivision (i) of the House bill provided that in case of a tax assessed before the enactment of the revenue act of 1924, where the commissioner finally determines after the enactment of the revenue act of 1924 the amount of the deficiency and where he believes that the collection of the deficiency will be jeopardized by delay, he may proceed to enforce payment, despite the restrictions prohibiting him from collection until the case has been decided by the board. The bill further provided that in such cases the board and the appellate courts shall have no jurisdiction, nor was the taxpayer allowed to stay collection by the filing of a bond, his only remedy being to pay the tax and sue for refund. The Senate amendment in this subdivision provides for a stay of collection by filing a bond in like manner, under the same conditions and with the same effect as in the case of a bond to stay collection under a jeopardy assessment under section 279.

(4) *Pending cases where hearing held.*—Subdivision (j), added by the Senate amendment, provides that in cases pending before the board at the time of the passage of the new bill where a hearing has been held, and the decision is rendered after the passage of the act, neither party shall have a right to review by a circuit court of appeals. In such cases the commissioner may within a year from the decision bring suit for the collection of any part of the amount disallowed by the board. In any such suit by the commissioner or in a suit by the taxpayer for refund the findings of the board shall be prima facie evidence of the facts therein stated.

(5) *Jeopardy assessments under the 1924 act.*—Subdivision (k), added by the Senate amendment, provides that in case of a jeopardy assessment made before the enactment of the new bill all proceedings shall be the same as under the revenue act of 1924 as amended by the

new bill, except that where no hearing has been held by the board before the passage of the new act, the decision of the board may be reviewed by the Circuit Court of Appeals, and that in considering any such cases, the jurisdiction and powers of the board shall be the same as provided in the new act, such as, for example, the power of the board to determine that a refund should be made where the decision is not only that there is no deficiency but also that the taxpayer has overpaid his tax.

(6) *Suspension of statute of limitations before passage of new bill.*—Section 277 (b) of the bill as agreed to in conference provides for the suspension of the running of the statute of limitations on assessments and collections during the time when the hands of the commissioner are tied, not only in the cases of taxes imposed by this title, but also (by reason of the provisions of section 283) in the cases of taxes under prior acts, whether a deficiency letter under the 1924 act has been sent out or not. Subdivision (l) of section 283, added by the Senate amendment, provides that in addition to the period of suspension already provided for, the running of the statute shall be considered to have been suspended for any period prior to the enactment of this act during which the commissioner's hands were tied.

The House recedes with an amendment making a clerical change and making a minor clarifying amendment.

Amendment No. 91: This amendment makes a change in a section number; and the House recedes.

Amendment No. 92: The House bill provided in subdivision (b) of section 281 that claims for credit or refund for income, war-profits, or excess-profits taxes should not be allowed unless made within four years from the time the tax was paid. The Senate amendment provides that, so far as relates to the tax imposed by Title II of the new bill, this period should be two years. The House recedes with an amendment making it three years.

Amendment No. 93: The House bill provided that where a 60-day letter has been sent out the right of the taxpayer to file a petition with the board shall constitute his sole right to contest the amount of the tax, and whether or not he files a petition with the board he has no right to claim or sue for refund, with certain enumerated exceptions. The House bill further provided that this limitation on the rights of the taxpayer should not apply in any case where he could prove that the deficiency letter was not received by him within 45 days from the time of mailing. The Senate amendment substitutes a subdivision providing that where the commissioner has sent a 60-day letter, and where the taxpayer files a petition with the board within the 60 days, he shall be barred from claim or suit for refund; but that if he does not choose to take the case to the board, he may pay the tax and bring suit for refund. The Senate amendment also provides that even where a petition has been filed with the board the taxpayer may bring suit for refund if the commissioner collects any amount in excess of the amount determined by the board. This (by virtue of subdivision (e) of section 906 of the Revenue Act of 1924 as amended by the new bill) would permit a suit for refund of any tax collected after the board has decided that the assessment or collection of the tax was barred by the statute of limitations at the time the deficiency letter was mailed. The Senate amendment also permits a suit for refund in cases where the board has decided that the



deficiency letter was sent out in time, but where the commissioner, after his hands are untied and he is free to make the assessment, waits until the statute of limitations has run. The right to sue for refund is given in both the above cases since the taxpayer has no right to enjoin the assessment or collection of the tax. The House recedes.

Amendment No. 94: This amendment makes a clerical change; and the House recedes.

Amendment No. 95: The House bill provided that where the Board of Tax Appeals finds that there is no deficiency, and further finds that there has been an overpayment of tax, the amount of the overpayment shall be refunded. The House bill further provided that this refund should be made if claim has been filed within the proper period of limitations or if the petition was filed with the board within four years after the tax was paid. The Senate amendment adds, in view of the action on Amendment No. 92, that the refund might be allowed if the petition is filed with the board, in the case of a tax imposed by the new act, within two years after the tax was paid. The House recedes with an amendment making this three years instead of two years.

Amendment No. 96: The Senate bill provides that if a taxpayer has on or before June 15, 1926, filed a waiver giving the commissioner additional time in which to assess taxes due for the taxable year 1920 or 1921, then a credit or refund relating to the taxes for such years shall be allowed or made if claim therefor is filed either on or before April 1, 1927, or within four years from the time the tax was paid. This amendment is in accordance with the similar action taken by Congress at various times with respect to the giving of waivers for the assessment of taxes for 1917, 1918, and 1919. It seems only reasonable if a taxpayer waives the statute of limitation and permits the commissioner to make an assessment after the expiration of the statute, that a similar right for filing a claim for refund should be granted to the taxpayer; and the House recedes.

Amendment No. 97: The Senate bill provides that if a waiver of the statute of limitations with respect to taxes due for the taxable year 1920 or 1921 is extended, a credit or refund relating to taxes for such year shall be allowed if a claim therefor is filed on or before April 1, 1928. The reason for this amendment is the same as the reason for amendment No. 96; and the House recedes.

Amendment No. 98: This amendment makes a change in section number; and the House recedes.

Amendment No. 99: The House bill provided that the income tax title shall take effect as of January 1, 1925. The Senate amendment provides that section 257, relating to publicity of returns, and sections 271 to 286, inclusive, dealing with procedure for assessment and collection of taxes, shall take effect on the enactment of this act. The House recedes.

Amendment No. 100: The House bill imposed an estate tax and imposed rates upon the net estate ranging from 1 to 20 per cent. The rate of 20 per cent was imposed upon the amount by which the net estate exceeded \$10,000,000. The House bill permitted a credit against the estate tax of any estate, inheritance, legacy, or succession taxes actually paid to a State or Territory or the District of Columbia in respect of any property included in the gross estate. The House

bill limited this credit so that it could not exceed 80 per cent of the estate tax imposed. The Senate bill repealed the estate tax. The House recedes with an amendment restoring the estate tax and the rate structure of the House bill, but increases the exemption in computing the net estate from \$50,000 to \$100,000. The 80 per cent credit of the House bill is retained. The credit provision in the House bill provided that this credit should only include such taxes as were actually paid and credit therefor claimed within four years after the filing of the return. The amendment reduces this period to three years, because the amendment as agreed to also reduces the time for assessment and filing claim for refund to three years instead of four years as provided in the House bill. The provisions relative to the assessment and collection of estate taxes are changed in the amendment as agreed to to correspond to the similar provisions for the collection and assessment of income taxes. The Senate bill reduced the rates imposed by the revenue act of 1924 in case of the estate tax and the gift tax by substituting for such rate the estate-tax rates imposed in the revenue act of 1921, and these rates as applied to the 1924 estate tax and gift tax are retained in the amendment as agreed to.

Sections 316 and 317 of the estate-tax title relate to the enforcement of the liability of transferees or fiduciaries in respect of an unpaid estate or gift tax and to the giving of notice to the commissioner by fiduciaries of the assumption of their fiduciary capacity. In general the discussion under amendments Nos. 87 and 88 is applicable in explaining the effect of sections 316 and 317. Therefore a complete discussion is here omitted.

Among the liabilities which the procedure outlined in section 316 will cover are the liability in respect of an estate tax, of an heir, devisee, distributee, or legatee of the decedent and the liability under section 315 (b) of a transferee of a gift made by a decedent in contemplation of death, or of a specific beneficiary of an insurance contract of a decedent; the liability of a donee of a gift in respect of the gift tax imposed on the donor under the revenue act of 1924, as amended; and the tort liability of a fiduciary in his own person and estate under section 3467 of the Revised Statutes for the distribution of an estate within his control without making adequate provisions for the payment of taxes to the Government. The notice given by an executor to the commissioner in conformity with section 317 is, of course, subject to the requirements of section 304 (a) as well as to the regulations by the commissioner with the approval of the Secretary under section 317.

Amendment No. 101: The House bill imposed a tax of \$2.50 per thousand upon cigars manufactured or imported to retail at not more than 5 cents each. The Senate amendment reduced this tax to \$2 per thousand; and the House recedes.

Amendment No. 102: The House bill imposed a tax of \$4.50 per thousand upon cigars manufactured or imported to retail at more than 5 cents and not more than 8 cents each. The Senate amendment reduced this tax to \$3 per thousand; and the House recedes.

Amendment No. 103: The House bill imposed a tax of \$7 per thousand upon cigars manufactured or imported to retail at more than 8 cents and not more than 15 cents each. The Senate amendment reduced this tax to \$5 per thousand; and the House recedes.

Amendment No. 104: The House bill imposed a tax of 8 cents per pound upon all unmanufactured leaf tobacco produced in the United States and hereafter sold or removed for sale to the consumer, and provided that such tax should be paid by the person so selling or removing such leaf tobacco. The House bill also provides that this provision should not apply to leaf tobacco sold or removed for sale to the consumer by (1) a farmer or grower of tobacco or (2) a tobacco growers' cooperative association. The Senate amendment strikes out this provision; and the House recedes.

Amendment No. 105: This amendment is a clerical change; and the House recedes.

Amendment No. 106: This amendment permits smoking tobacco, snuff, fine-cut chewing tobacco, and certain specified other kinds of tobacco to be put up in four additional sized packages of 9, 11, 13, and 15 ounces; and the House recedes.

Amendment No. 107: The House bill gave the commissioner, with the approval of the Secretary, authority to prescribe the size of packages to be used by taxpayers selling unmanufactured leaf tobacco to consumers subject to tax. The Senate amendment strikes out this provision. In view of the action taken on Amendment No. 104, the House recedes.

Amendment No. 108: The House bill imposed the same taxes on admissions and dues as are imposed under existing law with the exception of admissions to any place of amusement in which there is produced exclusively a legitimate spoken drama. The Senate amendment repealed these taxes. The House recedes, with an amendment restoring the admissions and dues taxes imposed by existing law and increasing the exempt class of admissions from 50 cents to 75 cents.

Amendment No. 109: The House bill imposed a tax of 3 per cent upon the manufacturer's or importer's selling price of passenger automobiles. The Senate amendment repealed this tax; and the Senate recedes.

Amendment No. 110: This amendment makes a clerical change; and the Senate recedes.

Amendment No. 111: The House bill imposed a 10 per cent excise tax upon pistols. It was believed that the term "pistol" included "revolvers." In the interest of certainty this amendment includes the term "revolvers," thereby imposing a tax upon pistols and revolvers; and the House recedes.

Amendment No. 112: The House bill reenacted the capital-stock tax imposed under existing law. The Senate amendment repealed this tax; and the House recedes.

Amendment No. 113: This amendment makes a clerical change; and the House recedes.

Amendment Nos. 114 and 119: These amendments make clerical changes; and the House recedes.

Amendments Nos. 115, 116, 117, and 118: The House bill imposed a graduated special excise tax upon the use of foreign-built yachts, ranging from \$1 to \$4 according to length. The Senate amendment doubles the House rates, but provides that the tax shall not apply to any foreign-built yacht or boat which was owned on January 1, 1926, by a citizen of the United States or by a domestic partnership or corporation; and the House recedes.

Amendment No. 119: This amendment is explained in connection with Amendment No. 114; and the House recedes.

Amendments Nos. 120, 121, and 122: These amendments relate to changes in section numbers; and the House recedes.

Amendment No. 123: The House bill imposed a stamp tax upon bonds issued by both persons and corporations. The Senate amendment limits the stamp tax upon the issuance of bonds to those issued by corporations; and the House recedes.

Amendment No. 124: The House bill retained the stamp tax provisions of existing law relative to the entry of merchandise at the customhouse. The Senate amendment repealed this provision; and the House recedes.

Amendment No. 125: The House bill reenacted the provisions of existing law imposing a stamp tax of 50 cents upon the entry for withdrawal of merchandise from customs bonded warehouse. The Senate amendment repealed this provision; and the House recedes.

Amendment No. 126: The House bill reenacted the provisions of existing law imposing stamp taxes upon passage tickets sold or issued in the United States for passage by any vessel to a port or place not in the United States, Canada, or Mexico, if costing more than \$10. The Senate amendment repealed these taxes; and the House recedes, with an amendment restoring these taxes and making a clerical change in the paragraph number.

Amendment Nos. 127 and 128. These amendments relate to paragraph numbers; and the House recedes, with amendments making further changes in these numbers.

Amendments Nos. 129, 130, and 131: These amendments make clarifying changes; and the House recedes.

Amendment No. 132: This amendment adds a new paragraph to section 600 of the revenue act of 1918, providing for an allowance for loss on reimported distilled spirits. In the case of the reimportation of distilled spirits a customs duty equal to the internal-revenue tax imposed upon distilled spirits is imposed upon the amount of distilled spirits shown upon the gauge at the time of reimportation. This amendment provides for an allowance for loss after reimportation and provides that in such cases an allowance for leakage shall be made in an amount that would have been allowed if such distilled spirits had remained continuously in an internal revenue bonded warehouse from date of manufacture until date of withdrawal. The House recedes, with an amendment providing that an allowance may be made for actual loss by leakage or evaporation in the case of such distilled spirits reimported prior to January 1, 1926, not exceeding 1 proof gallon as to each cask or package of a capacity of not less than 40 wine gallons for each period of six months or fraction thereof from the date of official regauge after reimportation, and authorizing the bottling of such spirits in accordance with the provisions of the act of March 3, 1897; and also providing that allowance for losses shall be subject to the condition set out in section 50 of the act of August 27, 1894.

Amendments Nos. 133, 134, 135, 136, and 137: These amendments make clarifying changes; and the House recedes.

Amendment No. 138: This amendment amends sections 611 and 612 of the revenue act of 1918 by making reductions as of January 1, 1927, and January 1, 1928, in the rates imposed by section 611 of the

revenue act of 1918 upon wine and in the rates imposed under section 612 of the revenue act of 1918 upon grape brandy or wine spirits used in the fortification of wine; and the Senate recedes.

Amendment No. 139: This amendment provides that the district courts of the United States should have exclusive jurisdiction to hear and determine all internal revenue cases in which the amount involved is in excess of \$3,000; and the Senate recedes.

Amendment No. 140: This amendment is a clerical change; and the Senate recedes.

Amendment No. 141: The House bill fixed the term of office of the members of the Board of Tax Appeals at 14 years. The Senate amendment reduces the term of office to 10 years; provides that no person who has been an employee of the Internal Revenue Bureau shall be eligible to appointment to any vacancy on the board until at least two years have elapsed since such official connection; and provides that the President by failing to fill vacancies may reduce the number of members of the board, if he determines at any time that the full membership is not necessary; and the House recedes with an amendment changing the term of office of members (after the original appointments) to 12 years, and striking out the prohibition with regard to the appointment of employees of the Internal Revenue Bureau and the provision authorizing the President to reduce the number of members of the board.

Amendments Nos. 142, 143, and 144: Under the House bill, in the case of a decision by a division of two or more members, the decision and findings of fact made in connection therewith became the decision and findings of the board unless within 30 days after such decision the chairman directed that it be reviewed by the board, but required that the entire board review every decision of a division of one member. Amendment 142 applies to a decision of a division of one member the rule applicable to a decision of a division of two or more members; and the House recedes. Amendment 143 is a clerical change, due to the change made by amendments 142 and 144; and the House recedes. The House bill also required every decision by any division dismissing any proceeding on the ground that the proof is insufficient to sustain the allegation of the petition or to entitle the petitioner to any relief to be reviewed by the full board. The Senate amendment strikes out this provision; and the House recedes because of the change made by amendment 142. The House bill denied the taxpayer a rehearing before the board. The amendment strikes out this provision in order to permit the rules of the board to govern the granting of a rehearing; and the House recedes.

The Senate amendment also provides that a decision of the board dismissing a petition for a redetermination of a deficiency shall be considered as its decision that the deficiency is the amount determined by the commissioner. In the case of dismissal upon the ground that the petition was filed too late, this provision is primarily necessary in order that the amount of the bond may be fixed, in the event the taxpayer desires to have the decision reviewed by the courts; but a suit for refund in such case, of course, is not barred, as it is in the case of a dismissal for want of prosecution, for example; and the House recedes.

Amendment No. 145: This amendment is a clerical change; and the House recedes.

Amendment No. 146: This amendment provides that mailing by registered mail to the taxpayer of any pleading, order, notice, or process in respect of proceedings before the board shall be held sufficient service of such pleading, order, notice, or process; and the House recedes with an amendment making the provision applicable to all persons as well as to the taxpayer.

Amendment No. 147: The House bill provided that any taxpayer might appoint a person as his agent in the District of Columbia to receive notices of deficiency and to receive all pleadings, orders, notices, or process in respect to proceedings before the board. This amendment strikes out this provision; and the House recedes.

Amendment No. 148: This amendment provides that the commissioner may pay his witnesses in advance when such payment is necessary; and the House recedes.

Amendment No. 149: This amendment is a clerical change; and the House recedes.

Amendment No. 150: The House bill provided that the decision of the board rendered after the enactment of this act may be reviewed by the Circuit Court of Appeals or the Court of Appeals of the District of Columbia if a petition for such review is filed by either the commissioner or the taxpayer within 90 days after the decision is rendered. The Senate amendment provides that an appeal should lie to the district court of the district in which the taxpayer resides, if notice of appeal is filed within six months, and that the decision of the district court should be subject to review upon appeal as an ordinary civil action. The Senate amendment also clarifies the provisions of the House bill relating to an appeal which involves the validity of only a part of the deficiency determined by the board; and the House recedes with an amendment providing that the decision of the board rendered after the enactment of this act may be reviewed by a circuit court of appeals or the Circuit Court of Appeals of the District of Columbia (as provided in section 1002) if the petition for such review is filed by either the commissioner or the taxpayer within six months after the decision is rendered; making it clear that the court rules will include rules for the preparation and certification of the record; and making clerical changes.

Amendment No. 151: Under the House bill, in case of a corporation which had failed to make a return, a decision of the board would be reviewed by the circuit court of appeals for the circuit in which is located the office of the collector to whom the corporation should have made the return. The amendment provides that in such case the decision may be reviewed by the Court of Appeals of the District of Columbia, and also provides that the commissioner and the taxpayer may, in any case, stipulate the court to which the review will be taken, in order to remove any doubt as to the proper court; and the House recedes.

Amendments Nos. 152, 153, and 154: These amendments relate to clerical changes; and the House recedes.

Amendment No. 155: The House bill provided that the appellate court shall have power to remand cases to the board for rehearing only if there had been prejudicial error by the board in ruling upon admissibility of evidence. The amendment strikes out this provision and provides that an appellate court may, in modifying or

reversing a decision of the board, remand the case for rehearing, as justice may require; and the House recedes.

Amendments Nos. 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167: These amendments make clerical changes; and the House recedes.

Amendment No. 168: The House bill authorized the commissioner with the approval of the Secretary to prescribe all needful rules and regulations for the enforcement of the act. The Senate amendment provides that in addition to publishing such rules and regulations the commissioner shall promulgate and publish all rules, practices, principles, and formulae applied or followed in the interpretation and application of any revenue act; and the House recedes with an amendment striking out the Senate provision, but requiring the commissioner with the approval of the Secretary to prescribe and publish all needful rules and regulations for the enforcement of the act.

Amendment No. 169: The House bill provided that no taxpayer shall be subjected to unnecessary examinations or investigations and only one investigation of the taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the commissioner after investigation notifies the taxpayer in writing that an additional inspection is necessary. The Senate amendment provides that no taxpayer shall be subjected to more than two inspections of his books of account each taxable year unless the taxpayer requests an additional examination; and the Senate recedes.

Amendment No. 170: This amendment provides that the bar of the statute of limitations against the United States and against the taxpayer shall operate to bar the remedy and also extinguish the liability. This amendment is deemed advisable because of an opinion in a recent decision of the Court of Claims (*Toxaway Mills v. U. S.*), although in a case presenting the specific point this opinion very probably would not be followed by the Supreme Court (see, Taft, C. J., in *Graham v. du Pont*, 262 U. S. 234, 256, 258). The House recedes with an amendment making certain that the provision does not require a refund to a taxpayer for any year (even though the statute has run against the Government) unless he had in fact overpaid his tax for that year, nor require a taxpayer to pay an additional tax for any year (even though the statute has run against his claim or suit for refund) unless he had in fact underpaid his tax for that year. Obviously, this section does not apply in the case of fraud or in the case of a waiver.

Amendment No. 171: This amendment makes a clerical change; and the House recedes.

Amendment No. 172: This amendment rewrites the provisions of the House bill relative to limitations on assessments and suits by the United States to make the section more nearly correspond with the similar sections relating to the income-tax title; and the House recedes with an amendment making a clerical change.

Amendments Nos. 173 and 174: These amendments relate to changes in section numbers; and the House recedes with amendments making further changes in the section numbers.

Amendment No. 175: This amendment makes a clerical change; and the House recedes.

Amendment No. 176: This amendment makes a clerical change; and the House recedes.

Amendment No. 177: The House bill provided that any person who willfully aids or assists in the preparation or presentation of a false or fraudulent return, affidavit, claim or document authorized or required by internal revenue laws, etc., shall be guilty of a felony and subject to fine or imprisoned upon conviction. The Senate bill makes it certain that this provision applies to the preparation or presentation under or in connection with any matter arising under the internal revenue laws of a false or fraudulent return, affidavit, claim or document; and the House recedes with an amendment striking out two words as surplusage.

Amendment No. 178: Under existing law a distraint may be made upon personal property of a delinquent taxpayer even though in the possession of another person. This amendment specifically makes it the duty of the possessor to surrender the property upon which the levy is made, and imposes upon him (in addition to any criminal liability) a civil liability if he fails to do so equal to the value of the property, but not exceeding the amount of tax, a liability similar to that of an executor who pays debts before he pays the debt due the United States; and the House recedes.

Amendment No. 179: This amendment makes a clerical change; and the House recedes.

Amendment No. 180: This amendment makes a clerical change; and the House recedes.

Amendments Nos. 181 and 182: The House bill reenacted without change the existing law relating to payment of interest on refunds and credits. Under existing law in the case of a credit taken against an additional assessment the taxpayer is allowed interest from the date of his overpayment to the date of the additional assessment. In the case of taxes imposed by acts prior to the act of 1921 the taxpayer (except as provided in section 283 of this bill) pays no interest in the case of underpayment up to the date of assessment. Consequently it frequently happened that the taxpayer who owes the Government money upon which he is paying no interest is collecting interest upon money which the Government owes him. This amendment remedies this situation by allowing interest in the case of a credit under an act prior to the Revenue Act of 1921 only to the date on which the original tax against which the credit is taken was due. In the case of refunds interest is allowed "to the date of the allowance of the refund." In practice the commissioner first signs the schedule of overassessments, which is sent to the collector, in order to determine whether the overpayments should be credited or refunded. This amendment proposes to fix as the date upon which the refund is allowed the date on which the commissioner signs the schedule of overassessment; and the House recedes.

Amendments Nos. 183 and 184: These amendments make clerical changes; and the House recedes.

Amendments Nos. 185 and 186: Under existing law the courts are authorized to allow interest on judgments against the United States. However, no uniform rate is prescribed, and in some cases no interest is allowed, while in others the maximum rate permissible under the State law is allowed. Frequently in cases where an appeal is taken interest is compounded. This amendment provides that simple in-



terest at 6 per cent per annum shall be allowed. Inasmuch as judgments and suits against collectors, with practically no exception, are being paid by the United States, this provision is also made applicable to suits against collectors; and the House recedes.

Amendment No. 187: Under section 3200 of the Revised Statutes a collector is authorized to seize real property outside of his collection district but within the State. This amendment amends section 3200 of the Revised Statutes so as to permit the seizure of personal property as well as real property outside of the collection district but within the State except property exempt from distraint and sale; and the House recedes.

Amendment No. 188: Under existing law considerable difficulty is encountered by reason of the fact that no time is specified as the date on which distraint proceedings are begun. This amendment fixes a definite and readily ascertainable date in the case of both personal and real property; and the House recedes.

Amendments Nos. 189 and 190: These amendments provide that the publicity and administrative provisions of the income tax title of the Revenue Act of 1924 shall be repealed on the date of the enactment of the bill; and the House recedes.

Amendment No. 191: This amendment relates to a change in section numbers; and the House recedes with an amendment making further changes in these numbers.

Amendment No. 192: This amendment provides that the salary of the General Counsel for the Bureau of Internal Revenue shall be payable out of any appropriation available for the payment of expenses of assessing and collecting the internal-revenue taxes; and the House recedes.

Amendment No. 193: The House bill created in the Bureau of Internal Revenue the office of special deputy commissioner of internal revenue, and provides that special deputy commissioners shall be appointed by the President by and with the advice and consent of the Senate, for terms of 10 years; that not more than six special deputy commissioners shall hold office at any one time, and fixes the salaries of such officers at the rate of \$8,000 per annum, and provides that these commissioners shall perform such duties as may be prescribed by the commissioner or required by law. The amendment strikes out this provision and creates in lieu thereof in the Bureau of Internal Revenue the office of assistant to the general counsel, and provides that these assistants to the general counsel shall be appointed by the President, by and with the advice and consent of the Senate, and that not more than six assistants shall hold office at any one time. Each assistant to the general counsel is to receive a salary at the rate of \$8,000 per annum, and they shall perform such duties as may be prescribed by the commissioner or required by law. The House recedes with an amendment providing for four assistant general counsel in the Bureau of Internal Revenue, and also creating in the Bureau of Internal Revenue the office of assistant to the commissioner and special deputy commissioner, and providing that the four assistant general counsel and the assistant to the commissioner shall each receive a salary at the rate of \$8,000 per annum, and the special deputy commissioner a salary of \$7,500.

Amendment No. 194: The House bill provided for the establishment of a commission to be known as the joint commission on taxation

and to be composed of 15 members: Five to be Members of the Senate, five to be Members of the House, and five to be selected from the general public. Such commission was to investigate and report upon the operation, effects, and administration of the Federal system of income and other internal revenue taxes and upon any proposals or measures which in the judgment of the commission might be employed to simplify or improve the operation or administration of such systems of taxes. It was contemplated that the work of such commission would be completed within two years. All members were to serve without special compensation. A fund of \$25,000 was provided for clerical and traveling expenses. The Senate eliminated the House provision and provided for the creation of a joint committee comprised of five members each from the Ways and Means Committee of the House and the Committee on Finance of the Senate. The Senate bill provides for the employment of necessary experts and assistants through whom the joint committee will be in direct contact with taxpayers for the purpose of obtaining all necessary information, to assist in the framing of future revenue legislation. The House recedes with an amendment accepting the main features of the provision of the Senate bill and stating specifically that the committee shall have authority to publish from time to time for public examination and analysis proposed measures and methods for the simplification of internal revenue taxes, and requiring the committee to make to the Senate and the House not later than December 31, 1927, a definite report thereon, together with such recommendations as it may deem advisable.

Amendment No. 195: The House bill provided for a refund to the manufacturers of passenger automobiles equal to 2 per cent of the price for which the automobiles are sold, in the case of all automobiles that are held by automobile dealers on the date the reduction in the rate upon passenger automobiles becomes effective. Provision is made in the House bill for the remission of such refund by the manufacturer to the automobile dealer. The amendment provides that the words "to a dealer" shall be stricken out in the interest of certainty. In view of the fact that the tax is imposed under existing law, in the case of complete automobile bodies, upon the body manufacturer, and in view of the fact that the House bill limits the refund to the tax imposed upon the article sold by the manufacturer to the dealer, it has been suggested that under a strict interpretation of this section of the House bill, since the automobile manufacturer sells direct to the dealer, a refund could not be allowed to the dealer of the tax imposed upon the body and reimbursed by him to the manufacturer. The amendment to this section is made in order to make certain that the dealers shall be entitled to a refund based upon the tax paid upon the selling price of both the body and the chassis; and the House recedes.

Amendment No. 196: The House bill provides for a refund to the manufacturer of passenger automobiles equal to 2 per cent of the price for which the automobile is sold in case of all automobiles that are held by automobile dealers on the date the reduction in the rate upon passenger automobiles becomes effective. The Senate amendment, in view of the action of the Senate in striking out the entire passenger automobile tax, provided for a refund of the entire tax. The Senate recedes.

Amendment No. 197: This amendment fixes the salary of the Government actuary, so long as the position is held by the present incumbent, at \$10,000 a year; and the House recedes.

Amendment No. 198: This amendment validates the regulations of the Internal Revenue Bureau applicable to the revenue acts of 1917, 1918, and 1921 in so far as such regulations apply to the relationship between invested capital of one year and taxes for the preceding year; and the House recedes with an amendment making a clerical change.

Amendment No. 199: This amendment provides that the installment basis provided in subdivision (d) of section 212 shall be retroactively applied in computing income under the provisions of the revenue acts of 1916, 1917, 1918, 1921, and 1924. In the application of this provision it is intended that the installment provisions of Regulations 45, promulgated on December 29, 1919, will be substantially followed in settling all cases under prior acts and under this bill; and the House recedes.

Amendment No. 200: This amendment provides that the amortization deduction provided by paragraph (9) of subdivision (a) of section 214 and paragraph (8) of subdivision (a) of section 234 of the revenue act of 1918 may (notwithstanding any provision in the revenue act of 1921) be allowed for the taxable years 1918, 1919, or 1920 if claim therefor was made before June 15, 1924; and the House recedes.

Amendment No. 201: This amendment provides that if an individual has paid a tax under the revenue act of 1918 or 1921 as a stockholder of a personal service corporation he shall be entitled to a credit or refund, even though the statutory period of limitations may have expired, if such corporation has been finally determined not to be a personal service corporation and such corporation has paid the tax imposed by Title II of the revenue act of 1918 or Title II of the revenue act of 1921, and such person files his claim for refund within one year after the enactment of this act or before the expiration of the period of limitations for filing such a claim, whichever is the later; and the House recedes.

Amendment No. 202: This amendment provides that the exemption granted mutual interinsurers and reciprocal underwriters under paragraph (11) of section 231 shall be retroactively applied in determining the tax liability under the provisions of the revenue acts of 1916, 1917, 1918, 1921, or 1924, and provides for the refund of any taxes paid by such mutual interinsurers and reciprocal underwriters if claim for refund is filed within one year after the enactment of this act; and the Senate recedes.

Amendment No. 203: This amendment provides that if any information relating to the liability of any taxpayer for any internal-revenue tax is obtained or received from any person other than the taxpayer, and is considered by any officer, employee, or agent of the Treasury Department, or by any bureau or division thereof, in determining such liability, then the taxpayer shall after due notice giving the nature of the information and the name and address of the person from whom such information was obtained or received, be afforded a reasonable opportunity to be heard in respect thereof; and the Senate recedes.

Amendment No. 204: This amendment was intended to provide for retroactive validation of all Treasury decisions, opinions of the

Attorney General, and regulations of the Treasury Department made under prior revenue acts; it provided that the liability of any taxpayer under any internal revenue law should be determined in accordance with the Treasury decision, opinion of the Attorney General, and Treasury regulations in force at the time the taxpayer's return was made. The House recedes with an amendment striking out the Senate provision, and inserting a section providing that income for any period before January 1, 1925, of a marital community in the income of which the wife has a vested interest as distinguished from an expectancy, shall be held to be correctly returned if returned by the spouse to whom the income belonged under the State law applicable to such marital community for such period. The section as agreed to also provides that any spouse who elects so to return such income shall not be entitled to refund on the ground that such income should have been returned by the other spouse.

Amendments Nos. 205 and 206: These amendments make clerical changes; and the House recedes with amendments making further clerical changes in section numbers.

W. R. GREEN,  
ALLEN T. TREADWAY,  
ISAAC BACHARACH,  
JNO. N. GARNER,  
J. W. COLLIER,

*Managers on the part of the House.*

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