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REVENUE BILL OF 1932

MAY 9 (calendar day, MAY 11), 1932.—Ordered to be printed

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

REPORT

[To accompany H. R. 10236]

The Committee on Finance, to whom was referred the bill (H. R. 10236) to provide revenue, equalize taxation, and for other purposes, having had the same under consideration, report favorably thereon, with certain amendments, and as amended recommend that the bill do pass.

FEDERAL BUDGET REQUIREMENTS

We are faced with a deficit for the fiscal year 1933 of $1,241,000,000, exclusive of statutory debt retirement. The deficit for the current fiscal year had reached a total of more than $2,300,000,000 by the end of April. We incurred a deficit in 1931 of $903,000,000. By the end of the current fiscal year our public debt will have been increased by more than $3,000,000,000, rising from $16,185,000,000 at the end of the fiscal year 1930 to more than $19,000,000,000 on June 30 of this year.

Although occasional moderate deficits in the operation of a government are to be expected, recurring large deficits must be avoided. Continued reliance upon borrowing, and failure to provide for a balance as between income and expenditures, and eventually for systematic debt reduction, would inevitably undermine the credit of governments as well as individuals. The maintenance of unimpaired credit is essential.

Your committee is unanimous in the conclusion that the indicated deficit for 1933 of $1,241,000,000 (exclusive of debt retirement) must be covered by reduction in expenditures and by the provision of additional revenue. The bill as reported by your committee should make this accomplishment possible. It should increase revenues by $1,010,000,000 during the fiscal year 1933, and it is expected that the Government economy program will reduce expenditures by at least $230,000,000.

It has been suggested that no effort should be made to balance the Budget in one year, that the process of balancing the Budget should be extended over a period of years, and that the intervening deficits should be met by borrowing. Although frequently misunderstood, this is substantially the policy adopted by the House of Representatives and approved by your committee. Last year's deficit was met by borrowing. This year's deficit has been, or will be, met by borrowing. With a deficit of $1,738,000,000 (including statutory debt retirements) in prospect for 1933 and a further large deficit for 1934, it is clear that immediate provision must be made for additional revenue. We would, by this bill, bring our Budget back into balance in the third year—that is, in 1933—and even then without covering requirements for statutory debt retirements in the amount of $497,000,000. Not until 1934 will our Government, notwithstanding the extraordinary revenue increases carried in the pending bill, obtain adequate revenues to meet current expenditures and also the requirements of the sinking fund.

Your committee has attempted to make its decisions accord with sound principles of taxation—ability to pay, tested either by income or outgo; maximum yields from rates not excessively high; avoidance of unnecessary hardship; prevention of undue disturbances to competitive situations; and a minimum of interference with economic recovery. It is believed that the bill as reported by your committee accords with these principles.

MAIN FEATURES OF BILL AS REPORTED

The more important features of the bill, as reported by your committee, may be summarized as follows:

(1) The bill will raise additional revenue, through changes in the income-tax rates and administrative provisions, in the amount of $287,000,000 for the fiscal year 1933.

(2) The normal tax rates, applicable to individuals, are increased to 3 per cent on the first $4,000, 6 per cent on the second $4,000, and 9 per cent on the balance of net income in excess of the exemptions. The exemptions have been reduced to $1,000 in the case of a single person and $2,500 in the case of a married person.

(3) Surtax rates begin at 1 per cent on net income in excess of $6,000 and increase to 45 per cent on net income in excess of $1,000,000.

(4) The corporate rate is increased from 12 to 14 per cent, and the existing exemption for small corporations is eliminated.

(5) The imposition of the normal tax upon corporate dividends, contained in the House bill, is eliminated.

(6) Adequate protection to the revenues against security losses is afforded, and the severity of the provisions of the House bill is mitigated.

(7) The increased estate tax rates and the gift tax proposed by the House bill are retained.

(8) Duties are imposed upon the importation of oil, coal, lumber, copper, and rubber.

(9) The bill proposes to impose selective manufacturers' excise taxes which will raise during the fiscal year (inclusive of the above duties) $277,500,000.

(10) Many of the excise taxes contained in the House bill have been eliminated, such as the proposed tax on toilet preparations, furs, jewelry, yachts and motor boats, mechanical refrigerators, sporting goods and cameras, firearms and shells, matches, candy, and soft drinks.

(11) The bill will raise $280,000,000 through miscellaneous taxes upon telephone and telegraph messages, admissions, the issue or transfer of bonds or capital stock, conveyances, oil transported by pipe lines, and checks.

(12) Increases in first and second class postal rates and other pending postal legislation will raise $160,000,000, which should be sufficient to make the Postal Service self-supporting.

COMPARISON OF HOUSE BILL AND COMMITTEE BILL

The following table gives in detail a comparison of the provisions and estimated revenues of the bill after its passage in the House of Representatives and the bill as it is reported by your committee:

Comparison of House bill and Finance Committee bill

Item	House bill	Estimated additional revenue, fiscal year 1933	Bill as reported to Senate	Estimated additional revenue, fiscal year 1933
Title I. Income tax:				
Individual—				
Normal tax rates	2, 4, 7 per cent	$29,000,000	3, 6, 9 per cent	$59,000,000
Surtax rates	1 per cent on net income in excess of $6,000 to 40 per cent on net income in excess of $100,000.	93,000,000	House bill increased to 45 per cent on net income in excess of $1,000,000.	96,000,000
Dividends	Subject to normal tax	89,000,000	House provision eliminated	
Total		211,000,000		155,000,000
Corporation—				
Rate	Increased 12 to 13¾ per cent	23,900,000	Increased 12 to 14 per cent	31,900,000
Exemption	Reduced to $1,000, net incomes of $10,000 or less	11,500,000	Exemption eliminated	20,100,000
Consolidated return	Additional rate of 1 and ½ per cent	8,000,000	House provision eliminated	
Total		43,400,000		52,000,000
Administrative changes—				
General	Limitation of losses from sales of securities, etc.	100,000,000	Limitation of losses from sales of securities, revised, etc.	78,000,000
Net loss provision	Carry-over of net losses suspended until after 1933.	7,000,000	Net losses carried forward one year	(1)
Dividends	Sec. 115 (b)	6,000,000	House provision eliminated	
	Sec. 115 (d)	2,000,000	Same as House bill	2,000,000
	Dividends, normal tax on foreign corporations and nonresident aliens.	3,000,000	House provision eliminated	
Depletion	Allowance revised	1,000,000	Further revised	(1)
Total		119,000,000		80,000,000
Title II. Estate tax	Additional estate tax	[3] 20,000,000	Same as House bill	(3)
Title III. Gift tax	Rates ¾ of one to 33⅓ per cent	[4] 5,000,000	do	[4] 5,000,000
Title IV. Manufacturers' excise taxes:				
Lubricating oils	4 cents per gallon	35,000,000	do	35,000,000
Brewer's wort	5 cents and	46,000,000	15 cents per gallon	97,000,000
Malt sirup	35 cents per gallon		3 cents per pound	
Grape concentrates	40 per cent		20 cents per gallon	
Imported oil, etc.	Gasoline, fuel oil, crude oil, 1 cent per gallon	5,000,000	Gasoline, 2½ cents per gallon; crude oil and fuel oil, ½ cent per gallon; lubricating oil, 4 cents per gallon; paraffin, 1 cent per pound; asphalt and bitumen 10 cents per 100 pounds.	5,000,000
Imported coal	10 cents per 100 pounds	500,000	Same as House bill	500,000
Imported lumber	No provision		$3 per 1,000 feet	1,000,000

Imported copper	No provision		4 cents per pound	(5)
Imported rubber	do		5 cents per pound	53,000,000
Toilet preparations	10 per cent	20,000,000	House provision eliminated	
Furs	do	15,000,000	do	
Jewelry	do	15,000,000	do	
Passenger automobiles	3 per cent	44,000,000	4 per cent	58,000,000
Trucks	2 per cent	4,000,000	3 per cent	6,000,000
Parts and accessories	1 per cent	8,000,000	2 per cent, tires and tubes exempt	9,000,000
Yachts and motor boats	More than $15, 10 per cent	500,000	House provision eliminated	
Radio and phonograph equipment and accessories.	5 per cent	11,000,000	Same as House bill	11,000,000
Mechanical refrigerators	do	6,000,000	House provision eliminated	
Sporting goods and cameras	10 per cent	6,500,000	do	
Firearms and shells	do	2,500,000	do	
Matches	4 cents per thousand	11,000,000	do	
Candy	5 per cent	12,000,000	do	
Chewing gum	do	3,000,000	3 per cent	2,000,000
Soft drinks	On general basis, 1921 act	10,000,000	House provision eliminated	
Total		255,000,000		277,500,000
Title V. Miscellaneous taxes:				
Part I. Telephone, telegraph messages, etc.	5 cents, messages costing 31 to 49 cents; 10 cents, messages costing 50 cents or more.	33,000,000	Telephone: 10 cents, messages costing 50 cents to $1; 15 cents, $1 to $2; 20 cents, $2 and more; telegraph, 5 per cent; cable and radio, 10 cents.	24,000,000
Part II. Admissions	1 cent per 10 cents on admissions over 45 cents	40,000,000	1 cent per 10 cents on admissions over 10 cents; 25 per cent, horse and dog races.	110,000,000
Part III. Stamp taxes—				
Issues of bonds or capital stock	10 cents per $100.	8,000,000	Same as House bill	8,000,000
Transfers of stock, etc	4 cents per $100 par value or 4 cents per share no par, but not less than one-fourth of 1 per cent; 4 cents to apply to loans of stock.	70,000,000	4 cents per $100 par value or 4 cents per share no par.	22,000,000
Transfers of bonds, etc	2 cents per $100 par value but not less than one-eighth of 1 per cent.	25,000,000	4 cents per $100 par value	5,000,000
Conveyances	50 cents on $100–$500; 50 cents per $500 in excess	10,000,000	Same as House bill	10,000,000
Sales of produce for future delivery	5 cents per $100	6,000,000	House provision eliminated	
Part IV. Oil transported by pipe line	8 per cent of charge	20,000,000	3 per cent of charge	6,000,000
Part V—				
Leases of safe deposit boxes	10 per cent of rental	1,000,000	House provision eliminated	
Checks	No provision		2 cents each	95,000,000
Part VI. Cigarette papers	do		Per package, etc., of 25 or less papers, one-half cent.	(1)
Total		213,000,000		280,000,000
Total additional taxes		866,400,000		849,500,000

1 Negligible.
2 Assuming collections, beginning May 1, 1933.
3 Assuming collections, beginning after June 30, 1933.
4 Assuming tax effective, beginning July 1, 1932.
5 Estimate not available.

Comparison of House bill and Finance Committee bill—Continued

Item	House bill	Estimated additional revenue, fiscal year 1933	Bill as reported to Senate	Estimated additional revenue, fiscal year 1933
Title VIII.—Increased postage rates and other postal provisions.	Increase 1 cent in first-class postage, etc.	[6] $165,500,000	Increase 1 cent in first-class postage; increase on second-class matter, etc.	$160,000,000
Total additional taxes and postal revenues		1,031,900,000		1,009,500,000
Required to balance Budget (excluding debt retirement).		1,241,000,000		1,241,000,000
Required reduction in expenditures to balance Budget (excluding debt retirement).		209,100,000		231,500,000

[6] Estimate of Committee on Ways and Means, which includes estimated effect on Budget of H. R. 10236 and of other bills recently passed by House.

On the basis of the House estimates, the bill as passed by the House would raise $1,031,900,000. It will be noted, however, that these estimates include $20,000,000 for the increased estate tax, which, in view of the delayed enactment of the new legislation, does not now seem justified and has therefore been excluded from the summary of the bill as reported by your committee, although the estate tax rates are identical in both bills. Moreover, the prospective yield of pending postal legislation included in the summary of the House bill would be reduced by $10,500,000 by the latest estimates of the Post Office Department. These two changes would reduce the estimated yield of the House bill from $1,031,900,000 to $1,001,400,000, as compared with an estimated yield of $1,009,500,000 for the bill as reported by your committee.

INCREASE IN INDIVIDUAL RATES

The present law imposes normal tax rates upon net incomes of individuals, of 1½ per cent upon the first $4,000, 3 per cent upon the second $4,000, and 5 per cent upon the remainder. The House bill provided increases to 2, 4, and 7 per cent, respectively, and your committee recommends rates of 3, 6, and 9 per cent. Surtax rates under existing law begin at 1 per cent upon income of $10,000, and are graduated to 20 per cent upon income in excess of $100,000. The House bill imposes a rate of 1 per cent upon income in excess of $6,000, increasing the rate to 40 per cent upon income in excess of $100,000. The bill as reported by your committee adopts the rates of the House bill, but extends them up to 45 per cent upon income in excess of $1,000,000. The credit for earned income, for administrative simplicity, is changed from a tax credit to an exemption from normal tax. The maximum earned income under existing law is $30,000, and under the House bill and the bill as reported, is $12,000.

As a result of these provisions, a somewhat broader base is given to our income tax structure; somewhat larger taxes will be expected from those able to pay; and the Government revenues will be increased appreciably. At the same time, the proposed rates will not impose an undue burden upon any class of taxpayers. Persons with moderate means, notwithstanding the increases, will be called upon to pay only a relatively insignificant proportion of their income.

The tables following give a comparison of the tax liabilities of individuals under the existing law, the House bill, and the bill as reported by your committee.

INCOME TAX, INDIVIDUAL

Comparison of tax payable under the revenue act of 1928, the revenue bill of 1932, as passed by the House, and the Finance Committee bill

MARRIED PERSON WITH NO DEPENDENTS; $5,000 EARNED-INCOME ALLOWANCE

Net income	Tax under 1928 act	Tax under House bill	Tax under Finance Committee bill	Net income	Tax under 1928 act	Tax under House bill	Tax under Finance Committee bill
$1,000	0	0	0	$26,000	$1, 479. 38	$2, 061, 25	$2, 478. 75
$2,000	0	0	0	$28,000	1, 719. 38	2, 381. 25	2, 838. 75
$3,000	0	$2. 50	$3. 75	$30,000	1, 979. 38	2, 721. 25	3, 218. 75
$4,000	$5. 63	20. 00	30. 00	$35,000	2, 659. 38	3, 661. 25	4, 258. 75
$5,000	16. 88	37. 50	56. 25	$40,000	3, 399. 38	4, 721. 25	5, 418. 75
$6,000	31. 88	57. 50	86. 25	$45,000	4, 209. 38	5, 911. 25	6, 708. 75
$7,000	46. 88	87. 50	126. 25	$50,000	5, 079. 38	7, 221. 25	8, 118. 75
$8,000	69. 38	135. 00	192. 50	$60,000	6, 999. 38	10, 221. 25	11, 318. 75
$9,000	99. 38	185. 00	262. 50	$70,000	9, 159. 38	13, 721. 25	15, 018. 75
$10,000	129. 38	235. 00	332. 50	$80,000	11, 459. 38	17, 721. 25	19, 218. 75
$12,000	219. 38	381. 25	518. 75	$90,000	13, 859. 38	22, 071. 25	23, 768. 75
$14,000	339. 38	561. 25	738. 75	$100,000	16, 259. 38	26, 621. 25	28, 518. 75
$16,000	479. 38	761. 25	978. 75	$150,000	28, 759. 38	50, 121. 25	53, 018. 75
$18,000	639. 38	981. 25	1, 238. 75	$200,000	41, 259. 38	73, 621. 25	78, 018. 75
$20,000	819. 38	1, 221. 25	1, 518. 75	$300,000	66, 259. 38	120, 621. 25	128, 518. 75
$22,000	1, 019. 38	1, 481. 25	1, 818. 75	$500,000	116, 259. 38	214, 621. 25	230, 518. 75
$24,000	1, 239. 38	1, 761. 25	2, 138. 75	$1,000,000	241, 259. 38	449, 621. 25	493, 018. 75

SINGLE PERSON: $5,000 EARNED INCOME ALLOWANCE

$1,000	0	0	0	$26,000	$1, 571. 88	$2, 166. 25	$2, 613. 75
$2,000	$5. 63	$15. 00	$22. 50	$28,000	1, 811. 88	2, 486. 25	2, 973. 75
$3,000	16. 88	32. 50	48. 75	$30,000	2, 071. 88	2, 826. 25	3, 353. 75
$4,000	28. 13	50. 00	75. 00	$35,000	2, 751. 88	3, 766. 25	4, 393. 75
$5,000	39. 38	67. 50	101. 25	$40,000	3, 491. 88	4, 826. 25	5, 553. 75
$6,000	61. 88	95. 00	142. 50	$45,000	4, 301. 88	6, 016. 25	6, 843. 75
$7,000	91. 88	145. 00	212. 50	$50,000	5, 171. 88	7, 326. 25	8, 253. 75
$8,000	121. 88	195. 00	282. 50	$60,000	7, 091. 88	10, 326. 25	11, 453. 75
$9,000	151. 88	245. 00	352. 50	$70,000	9, 251. 88	13, 826. 25	15, 153. 75
$10,000	191. 88	306. 25	433. 75	$80,000	11, 551. 88	17, 826. 25	19, 353. 75
$12,000	311. 88	486. 25	653. 75	$90,000	13, 951. 88	22, 176. 25	23, 903. 75
$14,000	431. 88	666. 25	873. 75	$100,000	16, 351. 88	26, 726. 25	28, 653. 75
$16,000	571. 88	866. 25	1, 113. 75	$150,000	28, 851. 88	50, 226. 25	53, 153. 75
$18,000	731. 88	1, 086. 25	1, 373. 75	$200,000	41, 351. 88	73, 726. 25	78, 153. 75
$20,000	911. 88	1, 326. 25	1, 653. 75	$300,000	66, 351. 88	120, 726. 25	128. 653. 75
$22,000	1, 111. 88	1, 586. 25	1, 953. 75	$500,000	116, 351. 88	214, 726. 25	230, 653. 75
$24,000	1, 331. 88	1, 866. 25	2, 273. 75	$1,000,000	241, 351. 88	449, 726. 25	493, 153. 75

MARRIED PERSON WITH NO DEPENDENTS; MAXIMUM EARNED INCOME ALLOWANCE

$1,000	0	0	0	$26,000	$1, 113. 75	$2, 000. 00	$2, 400. 00
$2,000	0	0	0	$28,000	1, 293. 75	2, 320. 00	2, 760. 00
$3,000	0	$2. 50	$3. 75	$30,000	1, 488. 75	2, 660. 00	3, 140. 00
$4,000	$5. 63	20. 00	30. 00	$35,000	2, 168. 75	3, 600. 00	4, 180. 00
$5,000	16. 88	37. 50	56. 25	$40,000	2, 908. 75	4, 660. 00	5, 340. 00
$6,000	28. 13	55. 00	82. 50	$45,000	3, 718. 75	5, 850. 00	6, 630. 00
$7,000	39. 38	82. 50	118. 75	$50,000	4, 588. 75	7, 160. 00	8, 040. 00
$8,000	56. 25	120. 00	170. 00	$60,000	6, 508. 75	10, 160. 00	11, 240. 00
$9,000	78. 75	165. 00	232. 50	$70,000	8, 668. 75	13, 660. 00	14, 940. 00
$10,000	101. 25	210. 00	295. 00	$80,000	10, 968. 75	17, 660. 00	19, 140. 00
$12,000	168. 75	320. 00	440. 00	$90,000	13, 368. 75	22, 010. 00	23, 690. 00
$14,000	258. 75	500. 00	660. 00	$100,000	15, 768. 75	26, 560. 00	28, 440. 00
$16,000	363. 75	700. 00	900. 00	$150,000	28, 268. 75	50, 060. 00	52, 940. 00
$18,000	483. 75	920. 00	1, 160. 00	$200,000	40, 768. 75	73, 560. 00	77, 940. 00
$20,000	618. 75	1, 160. 00	1, 440. 00	$300,000	65, 768. 75	120, 560. 00	128, 440. 00
$22,000	768. 75	1, 420. 00	1, 740. 00	$500,000	115, 768. 75	214, 560. 00	230, 440. 00
$24,000	933. 75	1, 700. 00	2, 060. 00	$1,000,000	240, 768. 75	449, 560. 00	492, 940. 00

Comparison of tax payable under the revenue act of 1928, the revenue bill of 1932 as passed by the House, and the Finance Committee bill—Continued

SINGLE PERSON; MAXIMUM EARNED INCOME ALLOWANCE

Net income	Tax under 1928 act	Tax under House bill	Tax under Finance Committee bill	Net income	Tax under 1928 act	Tax under House bill	Tax under Finance Committee bill
$1,000	0	0	0	$26,000	$1,188.75	$2,105.00	$2,535.00
$2,000	$5.63	$15.00	$22.50	$28,000	1,368.75	2,425.00	2,895.00
$3,000	16.88	32.50	48.75	$30,000	1,563.75	2,765.00	3,275.00
$4,000	28.13	50.00	75.00	$35,000	2,243.75	3,705.00	4,315.00
$5,000	39.38	67.50	101.25	$40,000	2,983.75	4,765.00	5,475.00
$6,000	56.25	90.00	135.00	$45,000	3,793.75	5,955.00	6,765.00
$7,000	78.75	135.00	197.50	$50,000	4,663.75	7,265.00	8,175.00
$8,000	101.25	180.00	260.00	$60,000	6,583.75	10,265.00	11,375.00
$9,000	123.75	225.00	322.50	$70,000	8,743.75	13,765.00	15,075.00
$10,000	153.75	270.00	385.00	$80,000	11,043.75	17,765.00	19,275.00
$12,000	243.75	425.00	575.00	$90,000	13,443.75	22,115.00	23,825.00
$14,000	333.75	605.00	795.00	$100,000	15,843.75	26,665.00	28,575.00
$16,000	438.75	805.00	1,035.00	$150,000	28,343.75	50,165.00	53,075.00
$18,000	558.75	1,025.00	1,295.00	$200,000	40,843.75	73,665.00	78,075.00
$20,000	693.75	1,265.00	1,575.00	$300,000	65,843.75	120,665.00	128,575.00
$22,000	843.75	1,525.00	1,875.00	$500,000	115,843.75	214,665.00	230,575.00
$24,000	1,008.75	1,805.00	2,195.00	$1,000,000	240,843.75	449,665.00	493,075.00

INCREASE IN CORPORATION TAX

The existing law imposes a tax of 12 per cent upon the net income of corporations. The House bill increased this rate to 13½ per cent. The bill now reported proposes to increase the rate to 14 per cent. The committee appreciates the fact that even the existing corporate rate is somewhat out of line with our other income-tax rates. Furthermore the corporate rate has been maintained at a relatively high level since the war. Nevertheless, your committee believes that additional revenue from corporations is necessary.

The existing law grants to corporations having a net income of $25,000 or less, an exemption of $3,000. The House bill proposed to decrease this exemption to $1,000, and made it applicable to corporations having net income of $10,000 or less. Your committee recommends that the exemption be eliminated entirely. It is believed that every corporation having net income, irrespective of the size of that net income, is in a position to contribute to the revenue needs of the Government.

CONSOLIDATED RETURNS

The House bill proposed an additional tax of 1½ per cent upon the net income of an affiliated group of corporations which elected to file a consolidated return. Your committee recommends that this additional tax be eliminated. It sees no justification for it. The provisions for consolidated returns under the present law and regulations recognize sound accounting practices and require tax liabilities to be determined on the basis of the true net income of the enterprise as a whole. No improper benefits are obtained from the privilege. Your committee believes that it is highly desirable, both from the point of view of the administration of our tax laws and the convenience of the taxpayer, that the filing of consolidated returns by affiliated groups of corporations be continued, particularly in view of the changes made in the revenue act of 1928 and in the regulations promulgated by the Secretary of the Treasury thereunder. It is difficult to justify the exaction of a price for the use of this form of return.

Your committee made a very exhaustive study and analysis of the entire subject of tax liabilities of affiliated groups of corporations, during its consideration of the revenue bill of 1928. Its conclusions are set forth in its report upon the revenue bill of 1928. It seems unnecessary to repeat them at the present time.

NORMAL TAX ON DIVIDENDS

Under all the revenue acts since 1913, dividends received by individuals have been exempt from normal tax. The purpose of the exemption is to prevent a second imposition of the basic normal tax upon the earnings and profits of corporations at the time of their distribution to stockholders. The House bill proposed to remove this exemption. Your committee believes that even the exigencies of the present situation do not justify double taxation of this nature and recommends that the exemption under the existing law be continued

LIMITATION UPON SECURITY LOSSES

The House bill adopted very severe limitations upon the allowance of losses from the sale of securities, as a deduction in computing net income. The provision was based upon a twofold policy: (1) Protecting the revenues from the growing practice of reducing tax liabilities by the sale of securities on which losses had accrued, and (2) preventing speculative losses from wiping out ordinary income, which represents real tax-paying ability.

Your committee is of the opinion, however, that the House bill went much further than the situation necessitated. Securities held for more than two years have been in the hands of investors. The losses they have suffered are decidedly real losses. Investments of this nature normally have been made from income upon which a tax was paid at the time it was earned. The shrinkage in the value of these investments is in every sense of the word a true loss actually sustained by the investor. The existing limitation, that capital losses can not reduce the tax by more than 12½ per cent, is adequate protection against excessive deductions. Accordingly, your committee is of the opinion that no change in this respect should be made in the existing law.

A somewhat different situation exists with respect to losses realized from the sale of securities held by the taxpayer for less than two years. These losses should properly be permitted only as an offset against gains from securities held for less than two years. But undue hardship under existing conditions should be avoided. Your committee believes that security gains and losses should be segregated, that security losses should be deducted solely from security gains; but that security gains should not be taxed until they actually exceed security losses. Accordingly, it is provided that any excess of the security losses in any year should be allowed, subject to certain necessary limitations, as a deduction against security gains in the subsequent year.

NET LOSSES

The net loss provision of the existing law is one of the essential protections against excessive hardships inherent in a tax based upon an arbitrary annual accounting. Taxpaying ability does not exist if a substantial part of a year's profits are required to cover a prior year's losses. The existing law is equitable and fair. The House bill proposed to eliminate it. Your committee recommends that the existing law be retained, but limited to a carry-over for but one year, rather than for two years.

ESTATE AND GIFT TAXES

The existing estate tax rates are more than doubled. They are extended to 45 per cent, as compared with a maximum rate under the existing law of 20 per cent. The increase is not subject to the 80 per cent credit for State estate and inheritance taxes. As a protection to both estate and income taxes, a gift tax is imposed. The rates are approximately three-quarters of the estate-tax rates. The committee recommends no change.

MISCELLANEOUS EXCISE TAXES

The bill, as it passed the House, contains a large number of special excise taxes. Many of these taxes will produce very little revenue, involve difficulties of administration, and fall within the type frequently designated "nuisance taxes." Your committee is of the opinion that it would be much sounder to select a smaller group of commodities impose rates which will raise the required revenues, and eliminate many of the minor taxes proposed by the House bill. In selecting the subjects of tax, your committee attempted, as far as possible, to prevent undue burdens upon any particular industry; to guard against disturbances to competitive situations; to select commodities the purchase of which would indicate taxpaying ability; to impose taxes capable of simple and inexpensive administration; and to select commodities which would yield fairly substantial revenues.

Your committee quite appreciates the fact that each particular industry selected feels very keenly that it should be exempt from tax and the necessary revenue collected elsewhere. However, your committee is confronted with the necessity of raising more than $700,000,000 through selective excise or miscellaneous taxes. The field of selection is necessarily limited. Important industries must be included. Your committee appreciates that the industries selected, in common with all other industries, have been and are seriously affected by the depression and consequent decreases in business activity and profits. It is realized that additional burdens at this time may seem unjustifiable and almost insurmountable. It is not believed, however, that taxes at the rates proposed by the bill as reported by your committee impose undue burdens upon industry and commerce or will seriously retard a return to normal business conditions. The required revenues must be raised. Benefits to be derived from the reestablishment of Federal finances upon an unquestionably sound basis far surpass any possible disadvantages from the burden of additional taxes.

MISCELLANEOUS TAXES

The bill as reported by your committee includes a number of miscellaneous taxes, among them the tax on admissions which is levied, with certain relatively minor exceptions, at a rate of 1 cent per 10 cents on each admission in excess of 10 cents. The rate of tax is the same as under existing law and as provided in the House bill. The present law, however, provides an exemption of $3 and the House bill exempts admissions of 45 cents or less.

Although realizing the importance of recreation afforded by theater entertainments, which constitute the principal subject of this tax, your committee believes that theater attendance even at low prices indicates definite tax-paying ability and considers that admissions provide a basis for tax, the incidence of which would be broadly distributed, and the burden of which would not be particularly heavy at the rates proposed. In the existing emergency a tax of 2 cents on a 20-cent admission or a tax of 3 cents on a 30-cent admission would not seem to constitute unduly burdensome contributions to the support of the Federal Government.

By reason of the fact that a great volume of theater charges fall below the exemption provided in the House bill, it is recommended that the tax be applied to all admissions in excess of 10 cents. The proposed tax is estimated to yield $110,000,000 for the fiscal year 1933, as compared with $40,000,000 estimated to be the tax obtained in the House bill. In view of the large amount of revenue to be obtained from the tax which your committee proposes, it is believed that the tax is definitely justified as a part of an emergency program.

The existing law provides for a tax of 2 cents per $100 of par value or per share of no par value on the transfer of stocks. The bill passed by the House raised this tax to 4 cents per $100 of par value or per share of no par value, the tax not to be less than one-fourth of 1 per cent of the sale price and to apply to loans of stock. Your committee concluded upon careful consideration that one-fourth of 1 per cent constituted an excessive tax and that the application of the tax to loans of securities, while increasing the tax in the case of short sales, would at the same time unduly interfere with other classes of operations requiring the loaning of securities—for example, in the case of sales of securities by persons living at a distance and, consequently, unable to make immediate delivery. It recommends, therefore, that the present tax be doubled and the rate increased to 4 cents per $100 of par value or per share of no par value.

The existing law contains no provision for tax on the transfer of bonds. The House bill provides for a tax of 2 cents per $100 or par value but not less than one-eighth of 1 per cent of the sale price on transfers of bonds. Since most bond transactions involve bearer securities, the administration of a tax based on a percentage of the sale price of such securities would be difficult. In addition, it is believed that the levy was excessive. Your committee, therefore, recommends a tax of 4 cents per $100 of par value.

TECHNICAL AND ADMINISTRATIVE PROVISIONS

TITLE I. INCOME TAX

Section 1. Application of Title

The proposed bill follows the general plan and arrangement of the revenue act of 1928. The proposed income-tax title is made applicable to 1932 and subsequent taxable years. The income-tax title of the 1928 act is not repealed by the bill and remains in force for the collection of taxes for the taxable years 1928 to 1931, inclusive.

The reference to section 811 (c) contained in the House bill is omitted by your committee, due to the fact that section 811 of the House bill has been stricken from the bill as reported.

Section 12 (c). Clerical

This change in a cross reference is made necessary by the change in income-tax rates applicable to individuals.

Section 12 (e). Additional Tax on Excessive Compensation for Personal Services

Your committee believes that the large amounts of compensation, particularly in the form of bonuses, emoluments, and rewards frequently paid to the officials of corporations are greatly in excess of reasonable compensation for the services actually performed. Accordingly it recommends a higher tax upon the excess of such compensation over a reasonable amount. Your committee believes that under present circumstances compensation, to the extent that it exceeds compensation at the rate of $75,000 per year, should not be regarded as reasonable compensation for income-tax purposes, and that any bonus, emolument, or reward (whether taking the form of cash, stock, stock rights, securities, or any other property), exceeding compensation at that rate should be subject to a higher rate of tax, fixed by your committee at 80 per cent of such excess. The 80 per cent tax provided in this subsection is in lieu of all other taxes under the income-tax title in respect of the excess, that is, the excess should be excluded from the income subject to ordinary normal and surtax rates.

Section 22 (a). Compensation of Presidents and Judges

This section has been amended to make it clear that compensation of the President of the United States and of judges of courts of the United States taking office after the date of the enactment of this bill is to be included in gross income. To effectuate that purpose, in cases in which the compensation for any such office has been provided in acts antedating the present bill, it is provided that all acts fixing the compensation of such President and judges are by this provision amended so that in every case such compensation will be reduced by the amount of the Federal income tax resulting from the inclusion in gross income of the amount of such compensation.

Section 22 (b). Dividends or Interest from Domestic Building and Loan Associations

The present law exempts domestic building and loan associations from all taxation and, in addition, exempts from tax $300 in interest or dividends received by an individual from such associations. While your committee does not desire to disturb the exemption granted under the present law to domestic building and loan associations themselves, it sees no reason why interest and dividends received from such associations should not be taxable to the recipient like any other investment income, such as interest on bank deposits and dividends from ordinary corporations. Accordingly, the exemption allowed under section 22 (b) (7) of the present law is omitted from the proposed bill.

Section 22 (b). Pensions and World War Compensation Payments

Your committee sees no valid reason for continuing the exemption in case of pensions and World War compensation payments granted by existing law, since it is believed that the credits for personal exemption and dependents provided in section 25 are adequate to take care of virtually all cases and that such amounts, if and to the extent they constitute income, should bear their portion of the tax.

Section 22 (b) (4). Tax-free Interest

The change in this section is made to bring the language of the section into accord with the clarifying change made in section 23 (b) pertaining to deductions of interest from gross income.

Section 22 (b) (7). Clerical

This is a clerical change occasioned by the repeal of section 116 (a) of the House bill relating to earned income from sources without the United States.

Section 23 (a). Compensation for Personal Services

Your committee is of the opinion that the payment of any compensation to any person of an amount which exceeds compensation at the rate of $75,000 per year should be regarded, for income tax purposes, as in excess of reasonable compensation for personal services actually rendered, and for that reason has amended this section by prohibiting a deduction of the amount by which any compensation of any person for personal services exceeds compensation at the rate of $75,000 per year.

Section 23 (b). Interest

Section 23 (b) has been clarified by a change in wording to indicate that no deduction may be taken for interest on indebtedness incurred or continued to carry obligations, the interest on which is exempt from the taxes imposed by the income-tax title. This is simply a clarifying change and is not intended to alter the existing law. A corresponding change has been made in section 204 (c) (8).

Section 23 (c) (2). Deduction for Foreign Income Taxes

The existing law allows a deduction in computing net income of so much of the income, war-profits, and excess-profits taxes paid to a foreign country as is not allowed as a credit against the tax due the United States. In thus allowing both a credit and a deduction, preferential treatment is frequently given to taxpayers receiving income from foreign sources. For example, a domestic corporation derives income of $100,000 from sources in the United States and $100,000 from sources in Great Britain. Such corporation pays to Great Britain a tax of $25,000 upon its British income. Under the present law, this taxpayer is allowed a credit of $12,000 against its tax due this country and, in addition, a deduction of $13,000 (the balance of its British tax) from its United States income. Since the entire foreign income is, in effect, excluded from the taxpayer's gross income because of the allowance of the credit for foreign taxes, the result of the additional deduction is that the taxpayer fails to pay a full tax upon its income from domestic sources. As your committee believes that a full tax should be paid upon income from sources within the United States, the section has been amended to deny a deduction for foreign taxes in all cases where the taxpayer has indicated on the return an intention of claiming a credit for foreign taxes under section 131.

To make it clear that a taxpayer who in respect to any taxable year claims credit under section 131 for any foreign taxes is thereby precluded from obtaining a deduction under this section for any other foreign taxes, your committee has amended the House bill by the addition of the words "to any extent."

Section 23 (e), (f). Clerical

These amendments are made necessary by the insertion in the House bill of subsections 23 (r), (s), and (t) and by the elimination by your committee from the House bill of subsections (s) and (t) of that bill.

Section 23 (e) (3). Casualty Loss Claimed as Deduction for Estate-Tax Purposes

Section 805 of the House bill provided that certain casualty losses incurred during the settlement of a decedent's estate should not be allowed as deductions for estate-tax purposes for the reason that they were allowable for income-tax purposes. Whether such losses should be allowed for purposes of the income or the estate tax depends largely upon the circumstances of the particular case, and your committee believes that an option should be given as to whether the deduction for losses of this character should be taken for one tax or for the other. To prevent any duplication of deductions, it is provided that the deduction for income-tax purposes may be allowed only if at the time of the filing of the return no deduction has been claimed for such loss in a return of the estate tax. A corresponding limitation upon any deduction for estate-tax purposes has been inserted in the amendment to section 303 (a) (1) of the revenue act of 1926 made by section 805 of the bill. For example, a decedent dies leaving a will under which he devises an office building to X. The building, uninsured, burns down and X claims a deduction for the loss in his income-tax return. The executor of the estate will not be entitled to a deduction for the loss in determining the net estate reported in the estate-tax return thereafter filed. However, if the estate-tax return claiming the deduction is first filed X will not be entitled to the loss deduction in his income-tax return.

Section 23 (g). Clerical

This is one of the series of amendments discussed in connection with section 111 (a) on a later page of this report.

Section 23 (i). Clerical

This is a change made necessary by the proposed amendment to section 117, relating to net losses.

Section 23 (l). Depletion

The House bill requires a change in the annual depletion allowance where a new estimate of the number of the recoverable units is made in the light of subsequent events. The effect of the amendment is shown by the following example:

A purchased for $1,000 an ore body with estimated recoverable units of 1,000. He removes 500 units and takes depletion deductions aggregating one-half of his cost, or $500. Subsequently it is ascertained that there remain in the mine 1,500 recoverable units and the original estimate of 1,000 recoverable units is revised. Under the amendment, his unrecovered cost ($1,000 less $500) would be spread over the revised estimate of the recoverable units (1,500) with the result that on each unit thereafter removed he would be allowed a depletion deduction of 33⅓ cents per unit instead of $1 per unit.

The provision in the House bill has been amended so as to make it clear that it is also to apply where the revision of the estimate of recoverable units results from day-to-day operations.

The cross reference contained in the House bill to section 114 (b) (3) relating to percentage depletion is changed in view of the fact that percentage depletion has been extended to metal mines as well as to sulphur and oil and gas wells.

Section 23 (n) (3). Clerical

This is a clerical amendment made necessary because section 7 of the vocational rehabilitation act has been superseded by section 12 of the World War veterans' act, 1924.

Section 23 (p) (1). Dividends Received by a Corporation from an Exempt Corporation

Dividends received by a corporation are allowed as a deduction in computing the net income of a corporation, upon the theory that a corporate tax has already been paid upon the earnings out of which the dividends are distributed. Where, however, the distributing corporation is exempt from tax, there is no reason why the dividends should be deducted from the gross income of the stockholder corporation. Accordingly, the existing law has been changed to deny the deduction in such a case.

Section 23 (q). Contributions to Pension Trusts Under 1928 Act

An amendment to the House bill has been inserted to make sure that any deduction allowable under the corresponding subsection of the 1928 act and apportioned under that act to any year or years subsequent to 1931 may be allowed for any taxable year covered by the bill.

Section 23 (r), (s), and (t). Limitation on Stock Losses

There are no provisions in existing law corresponding to section 23 (r), (s), and (t). Many taxpayers have been completely or partially eliminating from tax their income from salaries, dividends, rents, etc., by deducting therefrom losses sustained in the stock and bond markets, with serious effect upon the revenue. It is apparent that a number of these losses are taken for the sole purpose of tax avoidance.

The House bill, in recognition of this situation, provided for the disallowance of all losses sustained on the sales of stocks and bonds to the extent that such losses exceeded the gains from similar transactions. Losses on stocks or bonds held over two years were offset against gains on such assets held over two years, and losses on the sales of stocks or bonds held two years or less were offset against gains on such assets held two years or less. Subject to certain limitations an excess of losses over gains in one of the above mentioned groups could be offset against the gains in the other group. The amount of the losses not allowed within the taxable year, in no case, could be carried forward to the succeeding year.

Your committee, while in general agreement with the purpose of the House bill, believes that the method adopted to carry out this purpose is somewhat too drastic in that it penalizes pure investment losses as well as mere speculative losses.

As now drafted the limitation that losses on stocks and bonds can only be taken to the extent of gains from similar transactions is confined to the sale of such securities which have been held for two years or less. Gains or losses arising from the sale for stocks and bonds held for over two years are in all cases treated precisely as under present law, whether such losses are incurred by a corporation or an individual. In this connection it should be stated that such losses are already subject to a very considerable limitation for tax purposes, inasmuch as, in the case of an individual, the reduction in tax can not exceed 12½ per cent of such losses. Since the individual may pay a tax as high as 54 cents in the dollar under the rates proposed by your committee, the fact that the 12½ per cent limitation applies may reduce the advantage of a given loss for tax purposes by more than 75 per cent. Further limitation appears unnecessary in view of the above and because of the fact that these transactions are usually nonspeculative in character.

The method recommended by your committee in dealing with transactions in stocks and bonds held for two years or less, which obviously comprise the bulk of speculative transactions, may be stated as follows: The excess of losses over gains in these transactions is not allowed as a deduction against other income, but such excess may be carried forward and applied against gains from similar transactions in the subsequent year, provided first, that there is deducted from said excess the amount of any losses brought forward from the preceding year, and second, that the remainder may not be carried forward in an amount exceeding the net income of the taxpayer for the current taxable year. The reason for the first limitation is to restrict the carry-over to one year. The reason for the second limitation is to prevent the taxpayer from obtaining a deduction in the subsequent year for stock losses of the current year which losses under existing law would have resulted in no tax benefit to the taxpayer in the current year because of the absence in such year of income against which to take the losses.

In this discussion of the limitation on stock losses, stocks and bonds held by a taxpayer primarily for sale in the course of his trade or business are treated as stocks and bonds held for two years or less regardless of the time for which they may have been held.

The effect of these provisions may be illustrated by the following examples, wherein the terms 1-year losses and 1-year gains are used to denote losses or gains from the sale of stocks and bonds held for two years or less:

Case No. 1 (a)—Individual return 1932

Net income from salaries, dividends, rents	$50, 000
Excess of 1-year losses over 1-year gains for 1932	100, 000
1-year losses brought forward from prior year	[1]
Taxable income (present law)	------
Taxable income (House bill)	50, 000
Taxable income (Finance Committee bill)	50, 000
Amount allowed as carry-over (Finance Committee bill)	50, 000

In the above case it will be noted that the carry-over is limited to the net income, that is, to $50,000, although the 1-year losses not deducted in 1932 amount to $100,000. The taxable income is the same under the House bill and the Finance Committee bill.

Case No. 1 (b)—Individual return 1933

Net income from salaries, dividends, rents	$100, 000
Excess of 1-year losses over 1-year gains, computed without regard to the carry-over from 1932	75, 000
1-year losses brought forward from 1932	50, 000
Taxable income (present law)	25, 000
Taxable income (House bill)	100, 000
Taxable income (Finance Committee bill)	100, 000
Amount allowed as carry-over (Finance Committee bill)	75, 000

In the above case it will be noted that the net income limitation on the carry-over does not operate to cut down the amount of the carry-over, which is $75,000; i. e., the excess of 1-year losses over 1-year gains in 1933 computed without regard to the $50,000 carry-over from 1932.

[1] None allowable

Case No. 1 (c)—Individual return, 1934

Net income from salaries, dividends, rents	$150,000
Excess of 1-year gains over 1-year losses, computed without regard to the carry-over from 1933	65,000
1-year losses brought forward from 1933	75,000
Taxable income (present law)	215,000
Taxable income (House bill)	215,000
Taxable income (Finance Committee bill)	150,000
Amount allowed as carry-over (Finance Committee bill)	--------

In the above case it will be noted that the carry-over from 1933 is sufficient to eliminate from tax the 1-year gains of $65,000 in 1934, but that there will be no carry-over to 1935. The taxable income under the House bill is $215,000 and under the Finance Committee bill $150,000, showing some measure of relief to compensate for the denial of losses in the preceding year.

If cases 1 (a), 1 (b), and 1 (c) are surveyed as a whole, it will be found that over a 3-year period the individual under present law would pay taxes on $240,000, under the House bill on $365,000, and under the Finance Committee bill on $300,000.

Case No. 2—Corporation, 1933

Operating net income	$200,000
Losses from sale of stocks and bonds held over 2 years	100,000
Excess of 1-year gains over 1-year losses, computed without regard to the carry-over from 1932	50,000
1-year losses brought forward from 1932	25,000
Taxable income (House bill)	200,000
Taxable income (Finance Committee bill)	125,000
Carry-over to 1934 (Finance Committee bill)	--------

It will be noted in the above case that the corporation under the Finance Committee bill secures substantial relief over the results obtained by the House bill.

The exemption from the restrictions of these provisions provided for in the House bill is retained in the case of a dealer in securities (i. e., a merchant of securities whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities at wholesale and their resale to customers); in the case of losses sustained in connection with transactions with customers in the regular course of business. Your committee recommends extending this exemption to banks and trust companies incorporated under the laws of the United States or of any State or Territory, since it appears that such institutions should receive as favorable treatment as the dealers in securities. Traders or other taxpayers who buy and sell securities for investment or speculation, whether or not on their own account, and irrespective of whether such buying or selling constitutes the carrying on of a trade or business, are not regarded by your committee as dealers in securities within the meaning of this rule, and are not given exemption.

Subsection (s) requires that gains or losses from short sales of stocks and bonds, or from privileges or options to buy such securities, shall be treated as gains or losses from the sale or exchange of stocks and bonds held for less than two years. Your committee is of the opinion that there should be no distinction between such transactions and sales or exchanges of stocks and bonds. Accordingly, the limitation on stock losses is extended to this type of transactions.

Under subsection (t) the term "stocks and bonds" is defined. Federal, State, and municipal bonds are excluded from the definition so as not to hamper the sales of such securities. Bonds of foreign governments are also excluded.

SECTION 25 (a). CREDIT OF DIVIDENDS FOR NORMAL TAX PURPOSES

Your committee has restored to the bill the provisions of existing law permitting a credit for dividends for purposes of the normal tax. The provisions of the bill as reported by your committee represent a return to the rule established in prior revenue acts, which is designed to prevent a form of double taxation.

SECTION 25 (a) (1). DIVIDENDS RECEIVED BY INDIVIDUALS FROM EXEMPT CORPORATIONS

Dividends of a domestic corporation received by an individual are allowed as a credit against net income in computing the normal tax on the theory that the normal tax has already been paid by the corporation. Where, however, such corporation is one which is exempt from tax there is no reason why the dividends should not be subjected to normal tax when received by the stockholders. The law is changed to accomplish this purpose.

SECTION 25 (c). PERSONAL EXEMPTION

Under existing law, for the purposes of the normal tax only, a single person is entitled to a personal credit against income of $1,500 and a married person or head of a family is entitled to $3,500. On account of the urgent need for revenue, the personal exemption was by the House bill reduced to $1,000 in the case of a single person and to $2,500 in the case of a married person or head of a family.

SECTION 25 (e). CHANGE OF STATUS

Under existing law the credit for dependents is determined by the status of the taxpayer on the last day of the taxable year. A similar rule is applied with respect to the personal exemption in the case of a change of status on account of death. If the change in status is due to causes other than death a different rule applies in determining the amount of the personal exemption. These varying rules operate unjustly against both the Government and the taxpayer. For example, if a wife dies on December 30, her husband may be entitled only to the exemption allowed a single person. If the wife had income of her own she would be entitled to the personal exemption allowed a married person; in addition her husband would be entitled to the exemption allowed to a single person. Furthermore, if a child becomes 18 years of age on December 30, the parent loses the benefit of the $400 credit for dependents. The committee sees no reason for these varying rules. Accordingly, the proposed bill provides that if the status of the taxpayer, in so far as it affects the personal exemption or credit for dependents, changes during the taxable year, the exemption and credit shall be apportioned on a monthly basis under rules and regulations prescribed by the commissioner with the approval of the Secretary.

Sections 25 (f) and 25 (g). Earned Income Credit

The proposed amendments add subsections (f) and (g) to section 25 and are in lieu of section 31 of the existing law. Subsection (f) changes the form of the credit from a credit against the tax equal to 25 per cent of the tax on the earned net income to a credit against net income (but only for normal tax purposes) equal to 12½ per cent of the amount of the earned net income. While this change produces approximately the same result as the old system at the new rates it greatly simplifies the computation of the tax, eliminating 14 items from the return form. To prevent the credit from absorbing unduly the tax on other income it is provided that the amount of the credit shall in no case exceed 12½ per cent of the actual net income as distinguished from the earned net income.

Subsection (g) is the same as section 31 (a) of the existing law except that the $30,000 limitation on earned net income is reduced to $12,000.

Section 26. Credits of Corporations Against Net Income

The present law allows a credit against net income of $3,000 in the case of corporations having a net income of $25,000 or less. Under the House bill the credit is reduced to $1,000 and granted only to corporations having a net income of $10,000 or less. Your committee has eliminated this credit entirely in view of the urgent need for revenue.

Section 44 (d). Transmission at Death of Installment Obligations

Your committee has added to section 44 (d) a provision that the subsection shall not apply to the transmission at death of installment obligations if a bond is filed in the proper amount conditioned upon the return as income by any person receiving any payment on account of such obligations of the same proportion of such payment as would have been returnable by the decedent had he lived and received the same. It has come to the attention of your committee that considerable hardship sometimes occurs in the application of existing law to cases of decedents who die possessed of substantial amounts of installment obligations. In such cases the entire amount of the profit represented by the obligations must be reported as income in the return of the decedent for the year of his death. Your committee believes that if, for example, the estate of the decedent or his next of kin or legatees file a bond to return as income the proper proportion of the payments received by them on account of the installment obligations received from the decedent, the revenue will be properly protected. This section is accordingly amended to provide for such procedure.

Section 47 (e). Clerical

This is a clerical change made necessary by the elimination from section 26 of the specific credit of corporations against income.

Section 51 (a) and (b). Clerical

These are amendments made necessary as the result of the amendments made to section 25 (c), reducing the personal exemption to $1,000 for a single person and $2,500 for a married person.

Section 101 (c) (8) (C). Clerical

This amendment makes a clerical change in this subsection by inserting a reference to the revenue act of 1928 in lieu of a reference to the revenue acts of 1924 and 1926. The revenue acts of 1924 and 1926 are omitted, for the reason that if any taxpayer received stock or securities in a distribution wherein no gain or loss was recognized under such acts, such stock or securities have necessarily been held for more than two years prior to January 1, 1932, the effective date of this title.

Sections 101 (c) (8) (D), 113 (a) (11), and 118. Wash Sales

Section 101 (c) (8) of the existing law recognizes that in certain cases where the gain or loss basis of old property carries over, in whole or in part, to newly acquired property, the newly acquired property is regarded as taking the place of the old property and the two are regarded as the same property for the purpose of determining the period the property was held. The existing law does not specifically cover the cases of property acquired in connection with a wash sale, although no loss from such sale was recognized under section 118 and the basis of the old property is carried over in whole or in part under section 113 (a) (11) to the new property. Your committee sees no reason why property acquired under these circumstances should not be accorded the same treatment as is accorded in other similar cases. Accordingly, a new subparagraph (D), added to section 101 (c) (8) by the House bill, is concurred in by your committee.

In many cases of "wash" sales the shares disposed of in the "wash" sale have been purchased at different times and at different prices, or the shares repurchased in connection with the sale are subsequently sold at different times and at different prices, or the number of shares repurchased are greater or less than the number of shares sold. In all such cases some allocation as between the shares sold and the shares repurchased is absolutely essential in order to apply the new "tacking" provision included in section 101 (c) (8); and such allocation is, in fact, equally desirable in determining the amount of the loss to be disallowed on the "wash" sale and the basis for computing future gain or loss on the shares repurchased in connection with the "wash" sale. In the prior act it was assumed that such identification or allocation was unnecessary or, if necessary, could readily be made. In the types of cases mentioned above an accurate allocation is often impossible, and resort must be had to some rule of thumb. As it would be impracticable to state in the act a rule of uniform application to all the possible types of cases, it is provided in subsections (b) and (c) of section 118 that such allocation shall be made under rules and regulations to be prescribed by the commissioner. The allocation so made will, of course, be applicable not only for the purpose of section

118 but also for the purposes of sections 101 (c) (8) and 113 (a) (11). In view of this new provision the last sentence of section 118 of the 1928 act has been eliminated.

Section 118 has been amended to show clearly that the wash sale provisions apply to sales and repurchases occurring on the same day; this change is regarded as declaratory of the existing law and is made in the interest of clarity only. The section has also been amended to make it clear that it applies only to cases of the acquisition of substantially identical stock or securities by purchase or through a taxable exchange on which the gain or loss was fully recognized; the result of the amendment is to eliminate any possiblity of a conflict between section 113 (a) (11) and other basic provisions of the law. Other changes in the language of sections 113 (a) (11) and 118 are for clarification only.

Section 103 (11). Exemption of Mutual Hail, Cyclone, Casualty, or Fire Insurance Companies

The provisions of the existing law if subject to the interpretation sometimes contended for would result in the exemption of virtually all mutual property insurance companies without regard to their character or manner of organization and operation. Thus it is contended that the phrase "or other" following "farmers'" does not restrict the exemption to those companies which are similar to the type commonly known as "farmers'" and that this phrase in fact embraces practically all mutual property insurance companies which are not "farmers'" companies. It is also contended that the clause in the existing law requiring the income to be "used or held for the purpose of paying losses or expenses" is complied with by all mutual companies, since all such companies are at least in principle required to hold all of their income for the payment of losses (present or prospective) and of expenses. In order to state more clearly what your committee believes to be the true policy underlying the exemption of mutual insurance companies of this general class the bill confines the exemption to companies of the type commonly known as "farmers'," "county," "town," or "local" mutuals, with the same limitation as in the existing law that the income must be used or held for paying losses or expenses. The use of the words "farmers'," "county," etc., as modifying the word "mutuals" is not intended to describe or denote different types of mutual insurance companies but rather to indicate some, if not all, of the designations employed in the several State statutes to denote the same general type of mutual insurance companies. Companies of this type are almost without exception organized under statutes which restrict the territorial scope of their operations and also their manner of organization and operation so as to preserve their truly mutual character.

Sections 111 (a), 113 (a), 113 (b) (2), 114 (a), 114 (b) (1), and 23 (g). Adjusted Basis for Determining Gain, Loss, Depreciation, and Depletion

Sections 111 (a), 114 (a), 114 (b) (1), and 23 (g) of the 1928 act provide in substance that gain, loss, depreciation, and depletion shall be determined upon the "basis provided in section 113." Subsection (a) of the latter section provides, in the case of certain gifts or exchanges of property, where no gain or loss results or where any gain or loss which might result is not recognized, in whole or in part, that the basis of the property shall be continued or carried over beyond the time of the gift or exchange substantially as if the gift or exchange had not occurred. The cases covered by these provisions fall roughly into two general classes: (1) Where the basis of the property in the hands of the taxpayer is the same as it was in the hands of the transferor, and (2) where the basis of the property in the hands of the taxpayer is the same as the basis of property previously held by the taxpayer.

These provisions, however, do not in terms state whether "basis" means (1) the original capital investment in the property, or (2) the net capital investment in the property at any given point of time after adjustment for such items as have had the substantial effect of increasing or diminishing the original investment. Subsection (b) of section 111 requires the making of such adjustments to the basis, but it is argued that this subsection is limited to the computation of gain or loss under subsection (a) of the same section, after the basis has been determined under section 113. Hence, it has been contended that the adjustments provided for in section 111 (b) have no place and are to be disregarded in the determination of the basis under section 113. Some support for this contention is found in the decision of the Board of Tax Appeals in the case of Burlington Gazette Co. (21 B. T. A. 156), construing the corresponding provisions of the 1924 and 1926 acts.

In some simple cases the principle contended for creates no great practical difficulties. But in the great number of cases which are covered by the provisions of section 113 requiring a continuation or carry-over of basis, this principle would produce results palpably contrary to the whole spirit and purpose of the law.

Suppose that Corporation A buys machinery for $10,000, holds it for a period of years during which $2,500 of depreciation is written off and allowed as deductions, and then transfers the machinery to Corporation B in a tax-free reorganization. Under section 113 (a) the basis of the property in the hands of Corporation B is the same as it would be in the hands of Corporation A. Under the principle contended for, B, if it sold the property the day after the transfer from A, could compute gain or loss on the $10,000 cost of the property to A undiminished by the depreciation which had been allowed to A; or, if B continued to hold the property, it could recover through depreciation deductions the full $10,000 cost of the property to A, notwithstanding the fact that $2,500 of this cost had already been returned to A through depreciation deductions. Certainly no such result was ever intended. Since A was permitted to transfer the property to B free of tax, B should merely take A's position in respect to the property and should recover the same capital investment that A would have recovered had it continued to own the property.

Or, suppose that M buys stock of the X Corporation for $10,000, holds it for a period of years, during which he receives distributions of $2,500 which are properly applicable against basis, and then exchanges the stock for stock of the Y Corporation in a tax-free reorganization. Under section 113(a) the basis of the Y stock, in the hands of M, is the same as the basis of the X stock. Under the principle contended for, if M should sell the Y stock, he could compute gain or loss on the full $10,000 cost of the X stock, notwithstanding the fact that he had received distributions on the X stock which should have reduced the basis. If M had continued to hold the X stock and then sold it, he would, admittedly, be required to reduce the $10,000 cost by the $2,500 of distributions applicable against basis. Since M was permitted to make the exchange of stocks free of tax, the law clearly intends that the Y stock should simply take the same position as the X stock, and that M should recover the same capital investment from the Y stock which he would have recovered from the X stock had he continued to own it.

The committee does not believe that the existing law will be interpreted in the manner claimed and the whole purpose of the law defeated by so obviously a narrow construction. The provisions of the new bill, however, are designed to remove any possibility of controversy over the matter.

In providing more clearly for this type of cases, the committee has found it advisable to make a number of changes in the arrangement and phraseology of the provisions of the 1928 act relating to gain, loss, depreciation, and depletion.

Instead of using the term "basis" interchangeably to denote two different concepts, the new bill employs the terms "unadjusted basis" (or, for brevity, "basis") and "adjusted basis." "Basis" means the original capital investment in the property and is provided for in subsection (a) of section 112. "Adjusted basis" means, in substance, the net capital investment in the property at any point of time when it becomes material to determine gain or loss, depreciation, etc. It is the "basis" determined by reference to subsection (a), adjusted in the manner provided in subsection (b).

Whereas sections 23 (g), 111 (a), 114 (a), and 114 (b) (1) of the 1928 act referred to the "basis provided in section 113," the corresponding sections of the new bill make reference to the "adjusted basis provided in section 113 (b)."

The adjustment provisions which in the 1928 act were included in section 111 have been taken out of that section and, with certain changes to be mentioned separately (see discussion under sec. 113 (b)), included in section 113 as subsection (b). Paragraph (2) of this subsection contains the specific provisions governing the case of a "substituted basis"; that is, where the "basis" is continued or carried over from one person to another or from one piece of property to another. It is provided, in substance, that where there is a substituted basis or a series of substituted bases, not only the "basis" itself, but also the adjustments pertaining thereto must be continued or carried over. For example, A purchases the X building and subsequently gives it to his son B. B exchanges the X building for the Y building in a tax-free transaction, and then gives the Y building to his wife C. C, in determining gain or loss or depreciation upon the Y building, is required to take account of the depreciation which was successively allowable to A and B upon the X building and to B upon the Y building, in addition to the depreciation allowable to herself during her ownership of the Y building.

Section 112 (c) (2). Clerical

This amendment of the House bill is made necessary to carry out the policy of your committee in restoring the provision of section 115 (b) of existing law exempting from tax earnings or profits accumulated or increase in value of property accrued before March 1, 1913.

Section 112 (h). Clerical

The present law in section 112 (h) provides that the distribution in pursuance of a plan of reorganization by a corporation a party to the reorganization of its stocks or securities or stocks or securities in another corporation a party to the reorganization shall not be considered a distribution of earnings or profits for certain purposes of the tax law. Obviously, this rule should be applied only if no gain to the distributee was recognized by law, and the House bill inserted a provision to this effect.

Section 112 (k). Transfers to Foreign Corporations

Property may be transferred to foreign corporations without recognition of gain under the exchange and reorganization sections of the existing law. This constitutes a serious loophole for avoidance of taxes. Taxpayers having large unrealized profits in securities may transfer such securities to corporations organized in countries imposing no tax upon the sale of capital assets. Then, by subsequent sale of these assets in the foreign country, the entire tax upon the capital gain is avoided. For example, A, an American citizen, owns 100,000 shares of stock in corporation X, which originally cost him $1,000,000 but now has a market value of $10,000,000. Instead of selling the stock outright A organizes a corporation under the laws of Canada to which he transfers the 100,000 shares of stock in exchange for the entire capital stock of the Canadian company. This transaction is a nontaxable exchange. The Canadian corporation sells the stock of corporation X for $10,000,000 in cash. The latter transaction is exempt from tax under the Canadian law and is not taxable as United States income under the present law. The Canadian corporation organizes corporation Y under the laws of the United States and transfers the $10,000,000 cash received upon the sale of corporation X's stock in exchange for the entire capital stock of Y. The Canadian corporation then distributes the stock of Y to A in connection with a reorganization. By this series of transactions, A has had the stock of X converted into cash and now has it in complete control.

While it is probable that the courts will not hold all transactions of this nature to be tax-free exchanges, the committee is convinced that the existing law may afford opportunity for substantial tax avoidance. To prevent this avoidance the bill withdraws the transaction from the operation of the nonrecognition sections where a foreign corporation is a party to the transaction, unless prior to the exchange the commissioner is satisfied that the transaction is not in pursuance of a plan having as one of its principal purposes the avoidance of taxes. It will be noted that under this provision a taxpayer acting in good faith can ascertain prior to the transaction, by submitting his plan to the commissioner, that it will not be taxable if carried out in accordance with the plan. Of course, if the reorganization or the transfer is not carried out in accordance with the plan submitted the commissioner's approval will not render the transaction tax free.

This subsection provides for the full recognition of gain from any transaction described in any of the designated subsections (b) (3), (4), and (5), (d), (g), and so much of (c) as refers to (b) (3) and (5), involving a foreign corporation or the stock or securities thereof. That is, the entire amount of gain will be recognized upon any transfer of property to or by a foreign corporation, any exchange of stock or securities for stock or securities of a foreign corporation or vice versa, or any distribution by or to, or of the stock or securities of, a foreign corporation, unless prior to the transaction the commissioner is satisfied that it is not in pursuance of a plan having as one of its principal purposes the avoidance of taxes. For all other purposes, including the nonrecognition of loss in any transaction described in the foregoing subsections, the tax status of a foreign corporation is not affected by the new subsection.

Another aspect of this same problem is discussed later in this report in connection with Title VII.

Section 113 (a) (7). Basis of Property Transferred to a Corporation Where Control Remains in the Same Persons

Section 113 (a) (7) of the existing law provides that where in connection with a reorganization assets are transferred from one corporation to another, the assets so transferred shall retain the same basis in the hands of the new corporation as they had in the hands of the old corporation; but the application of this section is limited to cases in which an interest or control of 80 per cent or more in the assets so transferred remains in the same persons. This 80 per cent limitation has been reduced to 50 per cent to check tax avoidance, for the reason that experience indicates it is easy to secure a temporary investment of 21 per cent of friendly capital in the new corporation and thereby secure a stepped-up basis for the property transferred.

Section 113 (a) (8). Property Acquired by Issuance of Stock or as Paid-in Surplus

This subsection was changed in the House bill in order to reflect the long-established position of the Treasury Department relative to the basis of property transferred to a corporation as paid-in surplus. The Treasury has consistently regarded the basis of such property to the corporation as being the same as the basis of the property to the transferor. However, the recent decision of the Board of Tax Appeals in Rosenbloom Finance Corporation *v.* Commissioner, 24 B. T. A. 763, has opened an unexpected avenue of avoidance which, if ultimately sustained, might result in considerable loss of revenue. This decision holds that the basis of property transferred to a corporation as paid-in surplus is the fair market value of such property at the date of transfer. Regardless of the ultimate outcome of the Rosenbloom case, it appears advisable to amend subsection 113 (a) (8) by the addition of a paragraph providing for carrying over the transferor's basis in such a case, in order to insure the continuation of this long-established rule.

Your committee has added to section 113 (a) (8) (B) a provision that the basis of property transferred to a corporation as a contribution to capital shall be the same as the basis in the hands of the transferor.

SECTION 113 (a) (12). DETERMINATION AND ADJUSTMENT OF THE BASIS OF PROPERTY ACQUIRED DURING AFFILIATION

The Treasury regulations prescribed under section 141 (b) of the revenue act of 1928 require the members of an affiliated group to reduce the basis of the stock of another member of the affiliated group which they hold by the losses of such member which were included in the consolidated return to offset the income of the other members and which could not have been availed of by such member as a net loss if it had made separate returns. It is contended that, unless the statute requires such prior reduction of basis to be recognized for 1932 and subsequent years, the effect of the reduction under the regulations will be lost. Accordingly, your committee has amended this section so as to require that the basis of property acquired during any period in 1929 or any subsequent taxable year in respect of which a consolidated return is filed shall not only be determined under the regulations prescribed under section 141 (b) of this bill and the revenue act of 1928 but also that such basis shall be adjusted in accordance with such regulations. Under this amendment, corporations which were affiliated and filed consolidated returns for any one or more of the years 1929, 1930, or 1931 can not, by filing separate returns in 1932, avoid the adjustments required by the regulations in force at the time the consolidated returns were filed.

SECTION 113 (a) (13). PROPERTY ACQUIRED BEFORE MARCH 1, 1913

The rule as to property acquired before March 1, 1913, which was stated as subsection (b) of section 113 in the 1928 act, is now stated as paragraph (13) of subsection (a). The language of the former provision has been changed largely for the purpose of giving clearer recognition to the fact that the adjustments to cost in respect to the period prior to March 1, 1913, must be made before the comparison between cost and March 1, 1913, value is made.

For example, the cost of property acquired in 1905 was $100,000, and the depreciation sustained up to March 1, 1913, $25,000, so that the adjusted cost on March 1, 1913, was $75,000. At that date the fair market value of the property was $65,000. Since this is less than the adjusted cost at March 1, 1913, it is disregarded. The "basis" is, therefore, cost, or $100,000, and this amount, adjusted for depreciation both prior and subsequent to March 1, 1913, becomes the "adjusted basis."

Suppose, however, that the fair market value at March 1, 1913, was $85,000. Since this is greater than the adjusted cost at that date, it is taken as the "basis," and this amount, adjusted for depreciation subsequent to March 1, 1913, becomes the "adjusted basis."

SECTION 113 (b) (1). ADJUSTED BASIS

Paragraph (1) of section 113 (b) of the bill corresponds substantially to section 111 (b) of the 1928 act.

The subparagraph lettered (B) in the prior act has been separated into two subparagraphs lettered (B) and (C), to indicate more clearly the different rules applicable to the period since February 28, 1913, and the period prior thereto.

In subparagraph (B), relating to depreciation, etc., for the period since February 28, 1913, the bill requires that adjustment be made "to the extent allowed (but not less than the amount allowable)" instead of "by the amount * * * allowable" as in the prior act. The Treasury has frequently encountered cases where a taxpayer, who has taken and been allowed depreciation deductions at a certain rate consistently over a period of years, later finds it to his advantage to claim that the allowances so made to him were excessive and that the amounts which were in fact "allowable" were much less. By this time the Government may be barred from collecting the additional taxes which would be due for the prior years upon the strength of the taxpayer's present contentions. The Treasury is obliged to rely very largely upon the good faith and judgment of the taxpayer in the determination of the allowances for depreciation, since these are primarily matters of judgment and are governed by facts particularly within the knowledge of the taxpayer, and the Treasury should not be penalized for having approved the taxpayer's deductions. While the committee does not regard the existing law as countenancing any such inequitable results, it believes the new bill should specifically preclude any such possibility. Your committee has not thought it necessary to include any express provision against retroactive adjustments of depreciation on the part of the Treasury as the regulations of the Treasury seem adequate to protect the interests of taxpayers in such cases. These regulations require the depreciation allowances to be made from year to year in accordance with the then known facts and do not permit a retroactive change in these allowances by reason of the facts developed or ascertained after the years for which such allowances are made.

The requirement in subparagraph (B) of the House bill that the adjustment for depletion should be computed without regard to discovery value or percentage depletion is eliminated in the bill as to all adjustments in respect of the taxable year 1932 and subsequent years. Your committee believes it only fair that the basis of the property should be adjusted to the full extent of the depletion allowances, without regard to the method by which these allowances are determined. In view of the substantial change from the existing law in this respect, your committee is of the opinion that it should not disturb the depletion adjustments in respect of years prior to 1932.

The existing law requires the basis of stock to be reduced by distributions which, under the law when made, were applicable against basis. The bill, in subparagraph (D), requires, in addition, that basis be reduced by distributions which were free of tax when made. The Board of Tax Appeals has held that distributions out of profits accumulated before March 1, 1913, were not technically a return of capital, because made out of profits rather than capital, and could not be applied against basis in the absence of a specific statutory requirement. Some of the earlier revenue acts, while exempting such distributions from tax, did not in terms require them to be applied against basis, and distributions made during the effective periods of these acts would not, under the language of the existing law, be applicable against basis. The reason for exempting distributions of this character was that they were regarded as closely akin to a return of capital, whether or not technically such, and the same reasoning requires that they be applied in reduction of basis.

Section 114. Basis for Depletion

The amendment to paragraph (b) (2) as contained in the House bill makes it clear that in the case of metal and sulphur mines the depletion allowances may not longer be computed upon the basis of discovery value.

Paragraph (b) (3) of the House bill has been amended by the elimination of the word "sulphur" to restrict the application of the paragraph to oil and gas wells.

Section 114 (b) (4). Percentage Depletion for Metal Mines and Sulphur

Under paragraph (b) (4) metal mines are granted a percentage depletion allowance of 15 per cent, and sulphur mines or deposits of 23 per cent of the gross income from the property during the taxable year. As in the case of oil and gas wells this allowance can not exceed 50 per cent of the net income of the taxpayer from the property. In respect to the taxable years 1932 and 1933 the taxpayer is privileged to have the greater of either (1) the percentage depletion allowance or (2) an allowance computed on the adjusted basis provided in section 113 (b) (usually cost or March 1, 1913, value, with adjustments). This privilege is the same for those two years as that accorded both under the existing law and the bill in the case of oil and gas wells for all years.

In the return for the taxable year 1933, however, the taxpayer is required to state as to each property whether he elects to have the depletion allowance for such property for succeeding taxable years computed with or without reference to percentage depletion; this election must be as between either percentage depletion or depletion computed upon the adjusted basis. In the case of any property in respect of which a return is first made in a year subsequent to the taxable year 1933, the election indicated in the return for such year shall be binding as to all future years. If the taxpayer fails to make such election in the return in which it should be indicated, the depletion allowance for that and succeeding taxable years will be computed on the adjusted basis.

Section 115. Surplus Accumulated Prior to March 1, 1913

Under the present law, if a corporation pays a dividend out of earnings or profits accumulated before March 1, 1913, or out of increase in value of property accrued before March 1, 1913, the dividend in either case is not taxable to the shareholder, but the amount of the dividend reduces the basis of the stock in his hands. Under the House bill the dividend would be subject to tax as in the case of any other dividend, and the basis of the stock would not be reduced. The provisions of the present law have been in force, except for certain amendments, since the 1916 act, and your committee believes that they should continue in force. Consequently, they have been restored without change.

Under existing law, a distribution made from a depletion reserve based upon discovery value of a mine is not taxable as a distribution of earnings or profits but is applied in reduction of the basis of the stock. There is no reason for exempting these distributions from taxation, as they represent neither the return of capital nor earnings accumulated prior to March 1, 1913. Accordingly, the last sentence of section 115 (d) of existing law was eliminated by the House bill.

Under existing law, the provisions of section 115 (g) were made applicable in the case of the cancellation or redemption of stock not issued as a stock dividend only if the cancellation or redemption was made after January 1, 1926. This provision was inserted to prevent section 115 (g) being retroactive. It is, however, no longer necessary because the proposed income tax title applies only to 1932 and subsequent years.

Section 116. Exemption of Earned Income from Sources Without the United States

This section has been amended by the elimination of the subsection excluding from gross income amounts received by bona fide nonresidents of the United States from sources without the United States. Your committee believes there is no reason for the continuance of this exemption in the case of citizens of the United States residing abroad for the reason that under other sections of the act such citizens are granted a credit for income taxes paid foreign countries and should not be further relieved from Federal income taxes. Furthermore, a considerable proportion of the individuals previously benefited by this subsection have been employees of the United States who, because of their status as such, were usually exempt from any foreign tax upon their compensation received from the United States; these citizens are not believed by your committee to be entitled to a complete exemption from the Federal income tax upon such compensation.

Section 116 (b). Employees of Alaskan and Hawaiian Governments

Under the revenue act of 1928 the compensation of teachers in Hawaii and Alaska is exempt from tax, but this exemption did not extend to other Territorial employees. In the amendment of April 12, 1930 (ch. 136, 46 Stat. 161), to the Territorial act of April 30, 1900, salaries or wages paid by the Territory of Hawaii or any of its political subdivisions for services rendered in connection with a governmental function are made exempt from the Federal income tax. No such exemption is granted to employees of Alaska or the District of Columbia. Accordingly, the House bill repeals such amendment.

Section 117 (a) (3). Clerical

This amendment is necessitated by the additional paragraph relating to percentage depletion, included in section 114 (b).

Section 117 (b). Net Losses

The existing law permits the taxpayer to apply a net loss sustained in one taxable year against his net income for the succeeding taxable year; and if such net loss is in excess of his taxable income for such succeeding year, he may deduct such excess loss from his net income for the next taxable year. Under the bill as passed by the House the taxpayer was not entitled, in computing his net income for the taxable years 1932, 1933, and 1934, to use any net loss sustained for the years 1930, 1931, 1932, or 1933. For the taxable year 1934 and subsequent taxable years the taxpayer was entitled under the House bill to carry losses sustained during such years forward one year instead of two years.

The amendment made by your committee to the House bill allows for the taxable years 1932, 1933, and 1934 a similar deduction as in the House bill was allowed for the year 1935 and subsequent years.

Section 131. Credit for Foreign Income Taxes

In addition to the limitation contained in the existing law, by reason of which the credit for foreign taxes may not exceed the same proportion of the tax against which the credit is taken which the amount of net income from foreign sources bears to the total net income, the House bill added the limitation that the credit for taxes paid to any country should not exceed the same proportion of the tax as the income from that country bears to the total income. In the judgment of your committee, this additional limitation imposes undue restrictions upon our citizens doing business in foreign countries, and it has therefore been eliminated.

Since a taxpayer may not have in the same taxable year both the credit under this section and the deduction under section 23 (c) (2), it is no longer necessary to provide, in connection with the computation of the credit under subsection (b) of section 131, that the net income shall be computed without deduction of foreign taxes.

The new provision in subsection (d), that taxes taken as a credit upon the accrual basis may not also be taken as a deduction, constitutes simply a clarifying change.

The proviso in subsection (f), in the 1928 act, limiting the credit for taxes paid by foreign subsidiaries, referred to "the credit allowed * * * under this subsection." This reference was incorrect, as the credit was really allowed under subsection (a), and subsection (f) merely operated to increase the credit allowed under (a). In the new bill the reference is omitted, and the limitation is stated as a qualification of the amount of tax deemed to have been paid by the taxpayer through the foreign subsidiary.

Section 141. Consolidated Returns of Corporations

Subsections (a) and (c): Your committee has added a parenthetical clause which is designed to continue in force (in so far as not inconsistent with the new law) the consolidated returns regulations promulgated under section 141 of the revenue act of 1928 to take care of the companies where returns are filed on a fiscal-year basis prior to the time that consolidated returns regulations can be promulgated under the bill.

The House bill increased the tax of the affiliated group by 1½ per cent in the case a consolidated return was filed. Your committee has eliminated this change and restored the provisions of existing law in this respect as it sees no reason for penalizing corporations for the filing of consolidated returns which accurately reflect the income of the common business enterprise.

Subsection (e): Under existing law life insurance companies or insurance companies other than life or mutual are not permitted to file consolidated returns with corporations engaged in other lines of business because of the difference in the method of taxing insurance companies as compared with ordinary corporations. The same difficulty has been encountered in connection with life and stock property insurance companies. For example, the proposed amendment does not permit a life insurance company to file a consolidated return with a fire insurance company.

Sections 142 and 147. Clerical

These two sections have been amended to bring their language into accord with the reduction of the personal exemption allowed a single person to $1,000, and the language of section 142 has been further amended to bring its language into accord with the reduction of the personal exemption allowed a married person living with husband or wife to $2,500.

Section 143. Withholding of Tax at Source

Subsection (a) has been amended to bring the language in accord with the increase in the normal tax rate from 5 per cent under existing law to 9 per cent and to increase the corporate rate from 12 per cent under existing law to 14 per cent.

Similar changes have been made throughout the section due to the change in rates and the last proviso in subsection (b) which was inserted in the House bill has been stricken out due to the action of your committee in restoring the credit for dividends for the purpose of the normal tax.

The provision in existing law permitting deduction and withholding at the rate of 1½ per cent instead of at the rate of 2 per cent in the case of a citizen or resident has been stricken out because under the rates now in effect there is no normal rate of less than 3 per cent.

Section 165. Employees' Trusts

The House bill retained the provisions of existing law under which an employee who receives a distribution from a trust created by an employer as part of a stock bonus, pension, or profit-sharing plan is taxed upon the amount contributed to such fund by the employer plus all earnings of such fund in the year in which distributed or made available to him. In recent years situations have arisen in which the amount contributed to such fund by the employer and all earnings of such fund, together with the amounts contributed to the fund by the employees, have been invested by the trustee in stock of the employer corporation, and at the time of distribution to the employee the market value of the stock was less than the amount contributed to the fund by the employer plus the earnings of the fund.

Your committee believes that it is a distinct hardship to an employee to be taxed under such circumstances as the existing law requires, and corrects the situation by amending section 165 to provide that only the excess of the market value of the stock distributed or made available to the employee over the amounts paid in by him to the trust should be taxable in the year of distribution. This plan renders the employee taxable at the time of distribution upon the excess of the fair market value of the stock received by him over his contributions to the trust regardless of the amount contributed to the trust by the employer. In the case of cash distributions, of course, the present rule is unchanged.

Section 166. Revocable Trusts

Under the present law the income of a trust is taxable to the grantor where, at any time during the taxable year, the grantor has power to revest in himself title to any part of the corpus of the trust, either alone or in conjunction with any person not a beneficiary of the trust. In an attempt to avoid this section, the practice has been adopted by some grantors of reserving power to revest title to the trust corpus in conjunction with a beneficiary having a very minor interest or of conferring the power to revest upon a person other than a beneficiary; in such cases the grantor has substantially the same control as if he alone had power to revoke the trust. While it is, of course, yet to be established that such device accomplishes its purpose, it is considered expedient to make it clear that in any of these cases the income shall be taxed to the grantor. The House bill made the grantor of a trust taxable upon the income of any part of the corpus of the trust, where the power to revest in the grantor title to such part of the corpus was in the grantor alone or was in the grantor in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus. Your committee has extended the scope of this provision so as to include, as well, the cases where the power to revest title to any part of the corpus is held, either alone or in conjunction with the grantor, by a person not having a substantial adverse interest in such part of the corpus or in the income therefrom.

Section 167. Income for Benefit of Grantor

As in the case of the preceding section, attempted avoidance of the provisions of this section, relating to income held or accumulated for the grantor, has rendered expedient a change in its wording to clock certain recent practices. The present law taxes the income of a trust to the grantor when in his discretion, either alone or in conjunction with a person not a beneficiary, the trust income may be held or accumulated for future distribution to him, or is or may be applied to the payment of premiums upon insurance policies on the grantor's life. Trusts have been established in which income is held or accumulated for the grantor, which fact, it is contended, removes such trusts from the operation of this section. Here again, it is not at all certain that the courts will uphold such devices; yet the statute may well be clarified to remove any doubt that the income of such trusts is to be taxes to the grantors. In the House bill, the section has been amended to provide that there shall be taxed to the grantor of a trust any part of the income of the trust which (1) is, or in the grantor's discretion may be, held or accumulated for future distribution to him, or (2) may, in the grantor's discretion, be distributed to him, or (3) is, or in the grantor's discretion may be, applied to the payment of premiums upon policies of insurance on his life. Your committee has further amended the section so as to cover, in addition, cases in which the discretion as to the disposition of the income is in any person not having a substantial adverse interest in the disposition of such income, even though such discretionary power is not shared with the grantor. The House bill added a subsection defining the term "in the discretion of the grantor," so as to include within the purview of the section cases in which the discretion is in the grantor in conjunction with any person not having a substantial adverse interest in the disposition of the income in question.

SECTIONS 203 (a) AND 204 (c). CLERICAL

Since corporations, generally, are not allowed a specific credit against net income, the provisions of section 203 (a) (9) and section 204 (c) (10) of the House bill have been eliminated accordingly.

SECTION 203 (a) (2). DEDUCTION FOR RESERVE FUNDS OF LIFE INSURANCE COMPANIES

Under the existing law, a life insurance company is permitted to deduct an amount equal to 4 per cent of the mean of its reserve funds held at the beginning and end of the taxable year. In view of the fact that by far the greater part of the reserves for life insurance policies are maintained at rates less than 4 per cent, the effect of the existing law was to permit companies maintaining their reserves at such lower rates to take deductions substantially in excess of their actual reserve requirements. The House bill accordingly reduced the rate at which this deduction was to be computed from 4 per cent to 3½ per cent, upon the assumption that this uniform rate would not operate arbitrarily. Since many companies, however, maintain policy reserves at rates as high as 4 per cent, the effect of the House bill would be to require such companies to pay taxes upon amounts actually required to maintain their reserves, a result contrary to the general policy of the act. The House bill, moreover, would permit those companies maintaining policy reserves at rates less than 3½ per cent to receive free of tax amounts in excess of their reserve requirements.

In the judgment of your committee, the substantial purpose of the act, to permit a life insurance company to set aside free of tax the amount of investment income actually required to maintain the policy reserve, is best accomplished by requiring the deduction to be computed at the interest rate at which the policy reserves are actually maintained. Since few, if any, policy reserves are maintained at rates in excess of 4 per cent, the rate at which such deduction may be computed may not exceed 4 per cent. If a company maintains its reserves at different interest rates, the deduction must be computed by applying to each part of the reserve the rate at which such part is maintained.

In the case of combined policies covering life, health, and accident insurance, the deduction, in respect of such reserve funds not required by law as the commissioner finds necessary for the protection of policyholders, is to be computed uniformly at the rate of 3¾ per cent.

Section 203 (a) (3). Dividends to Life Insurance Companies from Exempt Corporations

This section has been amended to deny a deduction of dividends received by a life insurance company from an exempt corporation. This change corresponds to the change made in section 23 (p) (1) with respect to ordinary corporations.

Section 203 (b). Rental Value of Real Estate

Under existing law, a life-insurance company is required, as a condition to the allowance of the deductions for depreciation, taxes, and other expenses pertaining to real estate owned and occupied by it, to include in its gross income the rental value of the space occupied by it; such rental value must be not less than a sum which, together with rents from other tenants, will yield a net return of 4 per cent of the book value of the real estate. The Board of Tax Appeals has held that this limitation or condition upon the deduction is unconstitutional, and that the company may still deduct the entire amount of depreciation, taxes, and other expenses upon the whole property notwithstanding there is included in gross income rent from only a part of the property. Without regard to the legality of the present provisions, your committee believes that these provisions would operate somewhat severely in the present depressed condition of real estate, and that it is more equitable merely to disallow so much of these deductions as pertain to the part of the property which is occupied by the company than to allow such deductions in full upon condition of including in gross income a more or less arbitrary determination of rental value.

The bill as reported accordingly provides for the allowance of a proportionate part of the depreciation, taxes, and other expenses pertaining to real estate owned and occupied by the company, to be determined by the proportion which the rental value of the space not occupied by the company bears to the rental value of the entire property. Such rental value, instead of being fixed by a definite statutory formula, will be determined in accordance with the circumstances in each case.

SECTION 204 (b) (1). DEFINITION OF GROSS INCOME—INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL

Some question has arisen as to the adequacy of the definition in prior acts of the gross income of insurance companies other than life or mutual. Under a recent decision of the Supreme Court, some of the title guaranty and mortgage guaranty companies are taxable as insurance companies, and since a substantial part of their income might not be classed as either underwriting or investment income, it might not come within the definition of gross income contained in this section. As such companies are allowed the same deductions as are allowed to ordinary corporations, in addition to the purely insurance deductions provided in section 204, they would be in the highly favored position of being taxed upon only part of their income while being allowed all of their expenses, losses, and other deductions. Moreover, this definition, even in the case of the other type of insurance companies taxable under this section, may not include some miscellaneous forms of income which should be subject to tax. The bill accordingly requires the inclusion in gross income of insurance companies taxable under section 204 of all items constituting gross income under section 22 other than items of the character already specified in section 204.

SECTION 208 (c). DEDUCTIONS OF MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

The amendment to paragraph (1) (B) is merely for clarification. The use of the term "paid or incurred," which is defined in section 48, insures the determination of the deductions under this paragraph in accordance with the method of accounting employed by the taxpayer.

Paragraph (3) in the existing law allows to mutual insurance companies (other than life and marine) a deduction for premium deposits returned to policyholders and premium deposits retained for the payment of losses, expenses, and reinsurance reserves, in addition to the deductions for losses and expenses paid or incurred, allowed by other provisions of this section. Thus, it may be argued that an insurance company in this class may deduct what is virtually the same item several times over in different taxable years. Since deductions are already allowed for all losses and expenses as paid or incurred, there is no reason for any further deduction under this paragraph for premium deposits retained to meet such losses and expenses. The bill accordingly restricts the additional deductions allowed under paragraph (3) to returned premium deposits (as under existing law) and a reasonable net addition to reinsurance reserves, if not otherwise allowed.

SECTION 214. CREDITS AGAINST NET INCOME OF A NONRESIDENT ALIEN INDIVIDUAL

The personal exemption allowed by this section is reduced from $1,500 to $1,000 in accordance with the policy expressed in section 25 (c) of the bill.

SECTION 236. TIME FOR PAYMENT OF TAX BY FOREIGN CORPORATIONS

Under existing law foreign corporations on a calendar-year basis having any office or place of business in the United States are not required to pay their income taxes until June 15, following the close of the calendar year, although their returns must be filed on March 15. Your committee sees no reason why such corporation should not pay their income taxes at the same time that their returns are due, which is the rule applied in the case of domestic corporations, and the amendment so provides.

SECTION 251 (e). CREDIT AGAINST NET INCOME FROM SOURCES WITHIN POSSESSIONS OF THE UNITED STATES

The credit allowed under this section has been limited to a personal exemption credit of $1,000 in the case of a citizen of the United States entitled to the benefits of section 251, and the provisions of the House bill relating to the $1,000 specific credit in the case of domestic corporations entitled to the benefits of this section have been removed in view of the elimination from section 26 of the bill of any specific credit in the case of domestic corporations.

SECTION 261 (a). CLERICAL

The word "credits" in subsection (a) of this section in existing law has been changed to "credit," due to the elimination by this committee of the specific credit allowed corporations under section 26 of existing law.

TITLE II. ADDITIONAL ESTATE TAX

SECTION 401. IMPOSITION OF TAX

Under the House bill an additional estate tax is imposed equal to the excess of the amount of a tentative tax over the tax computed under existing law prior to the allowance of the 80 per cent credit. The tentative tax begins with net estates not in excess of $10,000 at the rate of 1 per cent and the rates increase up to 45 per cent in the case of net estates in excess of $10,000,000. The $100,000 exemption allowed under existing law in computing net estates is decreased to $50,000 for the purpose of determining the tentative tax. Estates of decedents subject to the tax imposed under existing law will also be subject to the tax imposed by this section. In some cases, estates which are not liable to the tax under existing law, will nevertheless be liable for the tax imposed under this section, due to the lowering of the exemption from $100,000 to $50,000. In order to make it clear that the tax will apply in such cases, your committee has stricken out the words "an additional" before "tax" in this section and substituted the word "a."

SECTION 402. CREDITS AGAINST TAX

Subsection (a) of this section makes it clear that the additional estate tax shall not be subject to the credit for State death taxes to which the estate tax imposed by section 301 (a) of the revenue act of 1926 is subject.

Subsection (b) of this section authorizes as a credit against the additional estate tax, subject to the limitations provided in section 301 (b) of the revenue act of 1926, as amended, gift taxes paid under Title III of the pending bill, but such credit is not to be in excess of the amount by which the gift tax exceeds the amount of credit authorized by section 301 (b) of the revenue act of 1926, as amended.

Section 403. Assessment, Collection, and Payment of Tax

The additional estate tax (except as provided in section 402) is to be assessed, collected, and paid in the same manner, and subject to the same provisions as the estate tax imposed by existing law.

This section imposes the same requirements upon the filing of returns as prescribed in existing law, except that a return is not required in the case of a resident decedent if the value of the gross estate at the time of the decedent's death does not exceed $50,000.

Your committee adds a clarifying amendment to make it plain that a nonresident decedent is required to file a return as provided in existing law even though the gross estate is less than $50,000.

TITLE III. GIFT TAX

Section 501. Imposition of Tax

Except for the administrative provisions, which are taken either from the estate tax or the income tax titles of the revenue acts of 1926 and 1928 and incorporated in this title (a resort to the expedient of the incorporation of administrative provisions by reference, as was done in the gift tax law of the revenue act of 1924, being thought unsatisfactory), the aim in framing this title has been to state with brevity and in general terms the provisions of a substantive character.

The tax applies only to gifts made by individuals and in the case of a nonresident alien only to gifts of property situated within the United States. Your committee has amended the House bill to tax gifts made by citizens of the United States of any property wherever situated regardless of whether the donors are residents or nonresidents.

The terms "property," "transfer," "gift," and "indirectly" are used in the broadest and most comprehensive sense; the term "property" reaching every species of right or interest protected by law and having an exchangeable value.

The words "transfer * * * by gift" and "whether * * * direct or indirect" are designed to cover and comprehend all transactions (subject to certain express conditions and limitations) whereby and to the extent (sec. 503) that property or a property right is donatively passed to or conferred upon another, regardless of the means or the device employed in its accomplishment. For example, (1) a transfer of property by a corporation without a consideration, or one less than adequate and fully in money or money's worth, to B would constitute a gift from the stockholders of the corporation to B; (2) a transfer by A to a corporation owned by his children would constitute a gift to the children; (3) a transfer of property to B where there is imposed upon B the obligation of paying a commensurate annuity to C would be a gift to C; (4) the payment of money or the transfer of property to B in consideration whereof he is to render a service to C would constitute a gift to C or gifts both to B and to C depending on whether the service to be rendered by B to C was or was not an adequate and full consideration in money or money's worth for that which was received by B; (5) the forgiveness or payment by A of B's indebtedness would constitute a gift to B; (6) where A creates a joint bank account for himself and B, there would be a gift to B when he draws upon the account for his own benefit to the extent of the amount drawn out; (7) where A creates a revocable trust naming B as beneficiary, a gift to B of the corpus is effected when A relinquishes the power to revoke or the power is otherwise terminated in B's favor (the income payments to B in the interim being gifts from A in the calendar years when received).

Section 502. Computation of Tax

The computation of the tax payable each year involves three operations, namely:

(1) A computation of the tax at the graduated rates on all gifts (with certain express exceptions) made after the enactment of this act, including gifts made in the current calendar year; (2) a computation of the tax at the graduated rates on the gifts made in the prior year or years; (3) the subtraction of the result of the second computation from that of the first. This computation results in a tax imposed on a cumulative basis. In short, the design is to impose a tax which measurably approaches the estate tax which would have been payable on the donor's death had the gifts not been made and the property given had constituted his estate at his death. The tax will reach gifts not reached, for one reason or another, by the estate tax.

The gift tax will supplement both the estate tax and the income tax. It will tend to reduce the incentive to make gifts in order that distribution of future income from the donated property may be to a number of persons, with the result that the taxes imposed by the higher brackets of the income tax law are avoided. It will also tend to discourage transfers for the purpose of avoiding the estate tax.

An objection urged against the former gift tax (that imposed by the revenue act of 1924) was that it might be readily evaded by spreading the gifts over a period of years. Under that tax a person could in each year make gifts equal to the deductions, including the specific exemption, and thus escape the tax entirely. Where taxable gifts were spread over a number of years, the combined effect of the annual specific exemption and of the graduated rates resulted in the aggregate of the gift taxes imposed being much less than what the tax would have been had all the gifts been made in a single year. If a gift tax is to yield a material revenue it is necessary that it be imposed on a cumulative basis as is the proposed tax. Since the gift tax is an adjunct of the estate tax which is not restricted to transfers made within a single year, an effective gift tax must give consideration, so far as the rate of tax is concerned, to transfers made in prior years.

The theory upon which the gift tax is based is that the rate of tax is measured by all gifts made after the enactment of the bill. This scheme is adopted in order to tax gifts made over a period of years at the same rate as if they had all been made within one year. For a more effective administration and to secure prompt collection of the revenues, the bill provides that the tax shall be computed and collected annually.

The gift tax rates have been adjusted to conform to the increase in estate-tax rates in the bill.

SECTION 503. TRANSFERS FOR LESS THAN ADEQUATE AND FULL CONSIDERATION

Since the tax is designed to reach all transfers to the extent that they are donative, and to exclude any consideration not reducible to money or money's worth, it is provided in this section that where the transfer is made for less than an adequate and full consideration in money or money's worth, the excess in value of the property transferred over such consideration shall be deemed a gift. For example, if A sells property worth $10,000 to B for $1,000, there is a gift of $9,000.

SECTION 504. NET GIFTS

By subsection (b) of the House bill a gift or gifts to any one person during the calendar year, if in the amount or of the value of $3,000 or less, was not to be accounted for in determining the total amount of gifts of that or any subsequent calendar year. Likewise, the first $3,000 of a gift to any one person exceeding that amount is not to be accounted for. Your committee believed the exemption was insufficient, and accordingly increased it to $5,000. Such exemption, on the one hand, is to obviate the necessity of keeping an account of and reporting numerous small gifts, and, on the other, to fix the amount sufficiently large to cover in most cases wedding and Christmas gifts and occasional gifts of relatively small amounts. The exemption does not apply with respect to a gift to any donee to whom is given a future interest. The term "future interests in property" refers to any interest or estate, whether vested or contingent, limited to commence in possession or enjoyment at a future date. The exemption being available only in so far as the donees are ascertainable, the denial of the exemption in the case of gifts of future interests is dictated by the apprehended difficulty, in many instances, of determining the number of eventual donees and the values of their respective gifts.

SECTION 505. DEDUCTIONS

Against gifts made by a resident donor there is allowed a specific exemption of $50,000, corresponding to the specific exemption in the estate tax law. This exemption, at the option of the donor, may be taken all in one year or spread over a period of years, but after the $50,000 exemption has been used up no further exemption is allowed. For neither the gift tax or the estate tax is a specific exemption allowed in the case of a nonresident.

The provisions authorizing deductions for charitable and similar gifts are patterned after those in the income tax law, and are broader than the corresponding provisions in the estate tax law.

A clarifying change has been made in this section by your committee to bring it into harmony with the policy of your committee to tax gifts made by nonresident citizens of property located outside the United States.

Section 506. Gifts Made in Property

The word "property" in the gift tax law includes money, so that pursuant to this section a gift of a rare coin would be measured by the value of the coin at the time of the gift.

Section 507. Returns

This section requires that returns disclosing gifts shall be filed on or before the 15th day of March following the close of the calendar year in which any gift in excess of $5,000 is made to any one individual.

Section 508. Records and Special Returns

This section is modeled after similar income-tax provisions.

Section 509. Payment of Tax

The tax is payable on or before the due date of the return.

Section 510. Lien for Tax

By this section there is imposed a lien additional to that imposed by section 3186 of the Revised Statutes in that it attaches to the property transferred by gift as of the time of the transfer.

Sections 511 to 527. General Administrative Provisions

These sections, relating to the determination and collection of the tax, are modeled after either corresponding provisions of the estate tax law or the income tax law, whichever have been found most adaptable.

Your committee has added to the House bill a section providing a penalty for wilfully attempting in any manner to defeat or evade the gift tax; this penalty corresponds to the penalty imposed by the income-tax statutes for the same offense.

Section 528. Refunds and Credits

A donor liable to a gift tax may have overpaid his gift tax for some other year. This section gives recognition to this fact and is modeled after the income tax provisions which specifically authorize the crediting of an overpayment for one year against a liability for another and the refunding of any balance which is not so credited.

Section 529. Laws Made Applicable

This is a standard provision.

Section 530. Rules and Regulations

Pursuant to this section rules and regulations for the enforcement of the gift tax law are to be prescribed by the commissioner with the approval of the Secretary.

Section 531. Definitions

The gift tax may not constitutionally apply to gifts made prior to the date of the enactment of the act imposing the tax. This limitation is, for convenience, incorporated in the definition of the term "calendar year."

The definition in subsection (b) follows a similar definition in the estate tax law.

TITLE IV.—MANUFACTURERS' EXCISE TAXES

Section 601 imposes taxes on the importation of certain articles. In order that the imposition of these taxes shall not operate as an abrogation of the Cuban reciprocity treaty, subsections (a) and (b) (5) are amended so that the taxes shall be subject to the exemption from duty or to the preferential rate granted Cuban products.

The taxes imposed under this section on imported articles are to be collected by the Customs Service in the same manner as customs duties, and all provisions of the customs administrative laws, with certain specific exceptions, are made applicable. Subsection (b) (4) is amended so that the drawback privilege will be applicable to imported coal, lumber, copper, and rubber, as well as imported oil.

Your committee recommends striking out of subsection (c) (1), relating to lubricating oils, the viscosity range in the House bill. Oils within the limits of the House bill can be produced by mixing lighter and heavier oils, and consumers could avoid the tax by such mixture. Since lubricating oils are also covered by the committee's substitute for paragraph (4), relating to imported petroleum and products thereof, a provision has been written into paragraph (1) to limit it to sales by domestic manufacturers.

The tax on brewer's wort is increased to 15 cents a gallon. It is believed that this commodity can easily bear this rate and that a substantial increase in revenue will result. The malt syrup rate of 35 cents a gallon in the House bill is changed to 3 cents a pound, which is approximately equivalent. This change is recommended for the reason that the products to which it applies are sold by the pound rather than by the gallon. The exemptions contained in the House bill are extended to include malt syrup sold by the manufacturer for use by the purchaser in the manufacture of foods, cereal beverages, and textiles. The paragraph has been rewritten for clarity.

The rate under paragraph (3) on grape concentrate, etc., has been fixed at 20 cents a gallon, instead of 40 per cent of the price or duty-paid value as in the House bill. Exemptions comparable to those in the malt syrup paragraph have been added.

The rate on imported crude petroleum, fuel oil, and gas oil under paragraph (4) has been reduced from 1 cent a gallon to ½ cent a gallon. The rate on gasoline has been increased from 1 cent to 2½ cents, and compensatory duties on lubricating oils, other liquid derivatives of petroleum, paraffin and other petroleum wax products, asphalt, and bitumen have been inserted.

The coal paragraph has been broadened to cover all sizes, grades, and classifications of coal. A provision has been added to exempt imports from any country which during the preceding year has imported from the United States a greater quantity of these products than it has exported to the United States.

The proposed paragraph (6) imposes a tax of $3 per thousand board feet on imports of lumber, and the proposed paragraph (7) imposes a duty of 4 cents a pound on the copper content of imported ores and concentrates and the materials and semimanufactured articles enumerated in paragraph 316, 380, 381, 387, 1620, 1634, 1657, 1658, or 1659 of the tariff act. Compensatory rates are provided for other articles containing copper.

A duty of 5 cents a pound on imported rubber and gutta-percha, and the rubber and gutta-percha content of imported articles, is proposed as a purely revenue-producing measure.

Sections 602 to 604, inclusive, 606, 608 to 613, inclusive, and 615, imposing taxes on toilet preparations, etc., furs, jewelry, etc., boats, mechanical refrigerators, sporting goods, firearms, shells and cartridges, cameras, matches, candy, and soft drinks, are stricken from the bill.

The rate on passenger automobile bodies and chassis has been increased from 3 to 4 per cent, on truck bodies and chassis from 2 to 3 per cent, and on parts and accessories from 1 to 2 per cent. In view of the import tax on rubber, tires and inner tubes not sold on or in connection with the sale of a truck or other automobile have been exempted from the tax on parts and accessories. The House bill contained a provision, which is retained by your committee, to eliminate the effect of certain court decisions under which many parts and accessories have escaped tax under prior revenue acts on the ground that they were not "primarily adapted" for use on automobiles or trucks, since they might be used on boats, tractors, etc. Under the bill, spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, if suitable for use on automobiles and trucks, will be taxable as parts or accessories whether or not "primarily adapted" for such use. As to other parts and accessories, the test of taxability will be the same as under the prior laws, since those enumerated represent the principal items as to which question has arisen, and to extend the list would result in the inclusion of articles whose use on automobiles and trucks may be minor as compared with their other uses.

A provision is inserted to allow a body manufacturer to sell bodies tax free to an automobile or truck manufacturer for resale by him, and the vendee is made liable for the tax on the body when he sells the completed automobile or truck.

Subsection (e) as proposed will allow a refund of tax paid on automobiles, trucks, parts, and accessories in the hands of dealers when the tax ceases to be in effect. To offset this concession, an amendment is made to the section relating to the effective date so that the tax on these articles will be in effect one month longer than the other excise taxes imposed by the bill.

No change is made in the tax on radio receiving sets, etc. The rate on chewing gum has been reduced from 5 to 3 per cent.

Section 616 of the House bill, retained as section 605, provides that the lease of an article shall be considered the sale of an article, so that the tax can not be evaded by a lease contract which does not involve passage of title.

Sections 617 and 618 of the House bill have been eliminated and a more complete set of administrative provisions inserted in their place.

Section 619 of the House bill, transferring the tax to the vendee in the case of contracts made before March 1, 1932, retained as section 611, is amended by substituting the date of May 1, 1932, for March 1, 1932, as the date as of which vendors may be fairly considered to have had notice of the likelihood of the imposition of the taxes. This seems equitable in view of the fact that the rates carried in the bill as passed by the House and reported to the Senate are higher than those in the bill as reported to the House, which contained the date of March 1. A provision is inserted to prevent transfer of the tax to the vendee when the vendor has agreed to assume it. Another amendment provides for a report by the vendor to the commissioner when the vendee refuses to pay the tax to the vendor.

The section relating to rules and regulations has been amended to make it clear that the rules and regulations relating to the taxes on importations shall be prescribed in the same manner as the customs regulations.

TITLE V. MISCELLANEOUS TAXES

Part I. Tax on Telegraph, Telephone, Radio, and Cable Facilities

The House bill provided for rates applicable to all telegraph, telephone, cable, and radio dispatches, messages, and conversations as follows: If the charge is more than 30 cents and less than 50 cents, a tax of 5 cents; if the charge is 50 cents or more, a tax of 10 cents. Your committee believes that these different classes of services call for different treatment, and proposes the following rates:

Telephone conversations costing 50 cents or more and less than $1, 10 cents; costing $1 or more and less than $2, 15 cents; costing $2 or more, 20 cents.

Telegraph dispatches and messages, 5 per cent of the charge.

Cable and radio dispatches and messages, 10 cents each.

The tax on leased wires and talking circuit special services is reduced from 10 per cent to 5 per cent.

The exemptions in favor of radio broadcasting companies and newspapers have been eliminated.

Provision has been inserted for extension of the due date of the taxes for not more than 90 days. The companies affected deal with large numbers of small accounts which are likely not to be paid for 60 or 90 days, and the extension privilege will enable them to defer the return until the amounts are collected and still have the return correspond with one month's entries on their books. This will be a convenience both to the Government and the taxpayers.

The provisions which are incorporated in the new Part VII on administrative provisions have been stricken from Part I.

Part II. Admissions Tax

The House bill reduced the exemption on admissions from $3 or less to 45 cents or less. Your committee proposes to reduce this exemption to 10 cents or less. This will yield $70,000,000 for the fiscal year 1933 more than the House bill.

The House made the rate on prize fights and other pugilistic matches or exhibitions the same as for admissions in general, as compared with 25 per cent on admissions over $5, under the present law. The higher rate has led to evasion of the tax, and it is believed that the reduction will result in an increase in the number of legitimate charges over $5 and a gain in the revenue from this source.

The rate on admissions to horse and dog races has been made 25 per cent.

The tax on charges by ticket brokers in excess of the established price is made a straight 10 per cent, the amendment of existing law made by the House bill being retained. The present law imposes a tax of 5 per cent on the first 75 cents of the excess over the established price and 50 per cent of the amount by which the additional charge exceeds 75 cents. It is believed that the present law penalizes brokers engaged in a legitimate business, that it has failed of its purposes, and that the proposed rate will about double the revenue.

The exemption of admissions the proceeds of which inure to the benefit of religious, educational, charitable, and like institutions and organizations has been subject to much abuse with respect to wrestling matches and prize fights and other pugilistic matches and exhibitions. The House bill provided that this exemption should not be granted in the case of such matches or exhibitions, and that colleges and universities should not have benefit of the exemption. Your committee is opposed to the taxation of college sports and has amended section 711 (c) accordingly.

A new section exempting admissions to the 1932 Olympic games has been added.

Part III. Stamp Taxes

Section 721 of the House bill, increasing the rate of tax on bond issues from 5 cents to 10 cents, has been amended to exempt certain annuity contracts which have been held taxable under existing law as "corporate securities."

Amendments have been made to section 722, providing for a like increase of tax on stock issues, to make it clear that the basis of computation of the tax remains the par value of the certificate as distinguished from the shares. Similar amendments are made in section 723, relating to stock transfers.

Your committee has stricken out the provision of the House bill providing that the tax on stock transfers should not be less than one-fourth of 1 per cent of the selling price, if any. It is believed that this is a burdensome rate and that the provision would cause administrative difficulties.

The House bill eliminated the provision of existing law exempting loans of stock. Your committee has restored this exemption, since the loaning of stock is essential to the carrying out of many legitimate transactions, such as the sale of stock by those living at a distance from the stock exchange.

An exemption of transfers from a fiduciary to a nominee and between nominees of the same fiduciary has been added.

Section 722 (b) of the House bill, intended to prevent evasion of the tax by resort to foreign exchanges, has been eliminated. With the reduction in the rate, the danger which subsection (b) was intended to meet will not exist.

Section 724, imposing a tax on bond transfers, has been amended by changing the rate from 2 cents to 4 cents per $100 of face value or fraction thereof, and by striking out the provision that the tax shall not be less than one-eighth of 1 per cent of the selling price, if any. Your committee believes that the enforcement of a percentage rate would be especially difficult in the case of transfers of bonds, only a relatively small number of which are made on exchanges.

An amendment is inserted to make it clear that bonds exempt from the tax on issuance, such as Federal, State, and municipal bonds, are not to be subject to the transfer tax.

Transfers of bonds in connection with tax-free corporate reorganizations and transfers of bonds from a fiduciary to a nominee and between nominees of the same fiduciary are exempted.

Section 725, imposing a tax on conveyances similar to that imposed by Schedule A of the revenue act of 1924, has been amended to exempt deeds which were deposited in escrow before April 1, 1932.

Under the House bill the stamp tax on sales of produce for future delivery imposed by subdivision 4 of Schedule A of Title VIII of the revenue act of 1926 is increased from 1 cent to 5 cents. Your committee has stricken out of the bill the proposed increase.

Part IV. Tax on Transportation of Oil by Pipe Line

The rate under section 731 on transportation of oil by pipe line has been reduced from 8 to 3 per cent. The word "oil" has been changed to "crude petroleum and liquid products thereof." This will make transportation of gasoline as well as crude oil taxable.

Amendments have been made to impose the tax on the pipe line rather than the person paying for the transportation. The provisions covered by the new Part VII have been stricken out.

Part V. Tax on Checks, Etc.

Your committee has inserted a tax of 2 cents on each bank check or draft, to raise $95,000,000 in the fiscal year 1933. This tax is to be collected by the bank from its customers by charges against their accounts. This method of collection is expected to be much less of a nuisance and expense to both the banks and their customers than a stamp tax would be. It will eliminate the necessity of the banks carrying stocks of stamps and stamped checks and the waste occasioned by their redemption and destruction when the tax ceases to be in effect.

The former Part V, tax on leases of safe deposit boxes, has been stricken out.

Part VI. Tax on Cigarette Papers

Under existing law, cigarette papers in books of 25 or less are exempt from tax. This is to permit free distribution of such books with packages of tobacco. This privilege is being abused and the tax evaded by giving with one package of tobacco two or more books of 25 papers each. To eliminate this practice, the exemption of the small books is eliminated and the tax is made applicable to withdrawals for consumption or sale as well as to sales.

Part VII. Administrative Provisions

To eliminate duplication, the administrative provisions applicable to the new taxes imposed by Title V have been combined in Part VII.

TITLE VI. ESTATE TAX AMENDMENTS

Section 801. Credit of Gift Tax on Estate Tax

This section authorizes a credit for gift taxes against the estate tax where any property subject to the gift tax is required to be included in the donor's gross estate on his death.

This credit provision is substantially the same as section 322 of the revenue act of 1924 (relating to the gift tax imposed by that act), with the addition of the exception stated in the latter portion of paragraph (1).

This added exception is inserted in view of the fact that, on account of the graduated rates, the total gifts subject to gift taxes (some of which may be included for estate tax purposes and some not) may be larger than the net estate subject to estate tax, and the estate-tax rate lower than the gift-tax rate. For example, the gifts may amount to $10,000,000, of which $1,000,000 may be subject to estate tax and the property owned by the donor when he died may amount to $500,000 (after deductions); thus the net estate would be $1,500,000, and the estate-tax rate considerably lower than the gift-tax rate. Such a situation would result in complete exemption of the estate from estate tax if it were not for the exception mentioned. The exception is designed to obviate this result by limiting the credit as provided in this section. The parenthetical clause, a part of the exception, is required by the fact that only the "lower" value is subject to both the gift and the estate tax. For example, if the gift-tax value is $600,000 and the estate-tax value $1,000,000, the lower value ($600,000) is the only one which has been the subject of both taxes. The excess ($400,000) has been the subject of estate tax only.

Paragraph (2) is required to indicate the amount of gift taxes for which credit is allowable where there are gifts in a calendar year which are included in the donor's gross estate for estate-tax purposes, and other gifts for the same year which are not so included.

Section 802. Eighty Per Cent Credit

A credit against the estate tax for State death taxes paid was first authorized by the revenue act of 1924 (sec. 301 (b)), where the credit was permitted up to 25 per cent of the estate tax. This percentage was increased in the revenue act of 1926 (sec. 301 (b)) to 80 per cent. Under existing law the credit includes only such State death taxes as are actually paid and credit therefor claimed within three years after the filing of the estate-tax return. This restriction has worked unfairly in certain instances, particularly where appeals to the Board of Tax Appeals have had the effect of postponing the final determination of the amount of the estate tax and consequently the State death taxes until after the expiration of the 3-year period.

The principal amendment made by this section is designed to effect an appropriate extension of the period for paying State death taxes and claiming credit therefor.

Subsection (a) of this section amends subdivision (b) of section 301 of the revenue act of 1926. The changes are:

(1) A clarifying provision to remove any basis of a claim for credit for State death taxes paid with respect to another person's estate, where the property is included in the decedent's estate.

(2) A specific provision that the 80 per cent limitation be computed after credit is made for the gift tax; that is, that the gift tax is first to be credited against the Federal estate tax, and the credit for State death taxes is limited to 80 per cent of the balance.

(3) An extension of the period for paying State death taxes and claiming credit from three to four years after the filing of the return.

(4) A provision in substance allowing the estate the entire period during which the case is before the board, and 60 days thereafter, to pay State death taxes and claim credit therefor. Many of the States have passed estate tax laws, designed to procure for the State the difference between 80 per cent of the Federal estate tax and the ordinary State inheritance taxes. In actual practice, the State tax authorities decline (in many cases, under the express provisions of State law, are unable) to determine the State estate tax until the Federal estate tax is fixed. If the estate files a petition with the board, it may be very much longer than three or four years after the filing of the return before the board or the courts to which appeals are taken render a final decision.

(5) A provision to the effect that, if the estate procures an extension of time to pay the tax (on account of undue hardship), a similar extension is granted for paying State death taxes and claiming credit therefor.

(6) A provision to the effect that a refund based on the credit may be made if claim therefor is filed within the above period, despite the provisions of section 319.

The interest provision is designed to prevent the allowance of interest, accruing after enactment of the pending bill, on any refund due to the State death tax credit. In some instances, interest on the 80 per cent refunded would equal or exceed the 20 per cent which the Federal Government is permitted to retain.

Subsection (b) of this section makes it clear that where the right to a credit for State death taxes is barred at the time of the enactment of this act, such right is not revived by any provision of this section, except that by a committee amendment to this subsection, the right to claim a credit for State death taxes (within the period provided in subsection (a)) is saved to estates which have filed petitions with the Board of Tax Appeals within the time specified by statute.

Section 803. Future Interests

The purpose of this amendment to section 302 (c) of the revenue act of 1926 is to clarify in certain respects the amendments made to that section by the joint resolution of March 3, 1931, which were adopted to render taxable a transfer under which the decedent reserved the income for his life. The joint resolution was designed to avoid the effect of decisions of the Supreme Court holding such a transfer not taxable if irrevocable and not made in contemplation of death. Certain new matter has also been added, which is without retroactive effect.

The changes are:

(1) The insertion of the words "or for any period not ascertainable without reference to his death," is to reach, for example, a transfer where decedent reserved to himself semiannual payments of the income of a trust which he had established, but with the provision that no part of the trust income between the last semiannual payment to him and his death should be paid to him or his estate, or where he reserves the income, not necessarily for the remainder of his life, but for a period in the ascertainment of which the date of his death was a necessary element.

(2) The insertion of the words "or for any period which does not in fact end before his death," which is to reach, for example, a transfer where decedent, 70 years old, reserves the income for an extended term of years and dies during the term, or where he is to have the income from and after the death of another person until his own death, and such other person predeceases him. This is a clarifying change and does not represent new matter.

(3) The insertion of the words "the right to the income" in place of the words "the income" is designed to reach a case where decedent had the right to the income, though he did not actually receive it. This is also a clarifying change.

(4) The insertion of the words "either alone or in conjunction with any person" is to reach a case where decedent had a right, with the concurrence of another person or persons, to designate those who should possess or enjoy the property or the income therefrom.

The amendments to section 302 (f) and section 315 (b) of the revenue act of 1926 are to bring these sections into agreement with section 302 (c) of the 1926 act, as amended, in the respects above indicated.

Section 804. Relinquishment of Dower, Etc., as Consideration

This amendment excludes, in determining "consideration in money or money's worth," the value of a relinquished, or a promised relinquishment of, dower, curtesy, or other marital rights in decedent's property. Section 302 (a) and (b) of the 1926 act require the value of such an interest to be included in the gross estate, and, if its value may, in whole or in part, constitute a consideration for an otherwise taxable transfer (as has been held to be so), or an otherwise unallowable deduction from the gross estate, the effect produced amounts to a subversion of the legislative intent expressed in section 302 (a) and (b).

For example, a decedent dies leaving an estate of $1,500,000 (after payment of all charges), and under the State law the surviving spouse is entitled to one-third, or $500,000, of which she can not be deprived by will without her consent. Under existing law the estate is entitled to no deduction on account of her statutory rights, but, if she and decedent had entered into a contract by which she was to receive from his estate a stated sum in consideration of a waiver of her statutory rights, the amount due her under the contract might be held a deductible claim against the estate as having been contracted for an adequate and full consideration in money's worth, namely, the value of her waived marital rights.

SECTION 805. DEDUCTIONS

This amendment, with one exception, merely clarifies the existing law so far as it relates to an important group of deductions allowable in computing the net estate subject to estate tax. The principal changes made are:

(1) A more definite statement that, in order for a mortgage to be deducted, the full value of the mortgaged property must be included in the gross estate. This change is merely for clarification.

(2) A clarifying provision to remove any question as to the deductibility of property taxes which did not accrue until after decedent's death. Such taxes are not claims nor administration expenses, and moreover are allowed for income-tax purposes.

(3) A change has been made in connection with the allowances of losses during the settlement of the estate as deductions to correspond with the change made under section 23 (e) of the income tax title.

(4) A clarifying provision limiting the requirement of an adequate and full consideration in money or money's worth to liabilities founded on contract. The existing law might be open to a construction under which no claim against the estate would be deductible unless supported by an "adequate and full consideration in money or money's worth," but the real intent could hardly have been to deny the deduction of liabilities imposed by law or arising out of torts, and the amendment whereby the requirement of a consideration applies only where the liability is founded on contract is designed to clear up any doubt which may be thought to exist.

SECTION 806. PRIOR TAXED PROPERTY

Under existing law, where two decedents die within five years of each other, if the first estate pays a tax and there is included in the second estate property which was also included in the first estate, deduction is allowed to the second estate on account of the property previously taxed. A similar provision is made for a deduction to an estate where the decedent received property by gift within five years prior to his death and a gift tax was paid upon such gift. Since the same rules apply in the two classes of cases, and this amendment has a common application, the explanations which follow will, for convenience, deal only with the situation of two decedents dying within five years of each other.

The principal changes in existing law made by this amendment are:

(1) Provision for reducing the deduction where a mortgage or other lien was allowed as a deduction to the first estate but was paid in whole or in part prior to the second decedent's death. For example, there may have been included in the first estate an item of property valued at $100,000, against which a deduction was allowed for a mortgage thereon of $25,000 (the only value actually taxed being $75,000). The mortgage was paid between the two deaths and the property included in the second estate at $100,000. A literal interpretation of the existing law might seem to require a deduction to the second estate of the full value of the property, though the prior estate paid a tax on the equity of redemption only.

(2) Provision for reducing the deduction for prior taxed property on account of other deductions, such as claims against the estate,

administration expenses, charitable bequests, and the specific exemption. The words "and not deducted under paragraphs (1) and (3) of this subdivision" were inserted in section 403 (a) (3) of the revenue act of 1921 to prevent a double deduction, but that purpose has not been entirely accomplished. Under existing law, if the decedent received from the first decedent bonds valued at $100,000, and specifically bequeathed those bonds to charity, only one deduction would be allowed. However, if instead of specifically bequeathing the bonds, he gave charity a general legacy of $100,000. which could be satisfied out of property other than the bonds, two deductions would be allowed. Under the amendment, the allowable deduction in the two examples is the same, namely, the full amount of the charitable bequest, and a pro rata part of the prior taxed property.

(3) Provision to the effect that, where the prior taxed property consists of two or more items, the aggregate value is to be used in computing the deduction. Under existing law, where there is a variance in the value of any items of property between the date of death of the first decedent and the date of death of the second decedent, the lower value of each item is used for the purpose of computing the deduction. Under the amendment the lower of the two totals, instead of the lower of each item, is used. For example, if one item is valued at $8,000 in the first estate and at $10,000 in the second estate, $8,000 is deducted as prior taxed property. If another item is valued at $12,000 in the first estate and at $9,000 in the second estate, $9,000 is deducted. It will be noted that the total of the two lower values is $17,000, which is the amount deducted as prior taxed property under existing law for the two items. The total of the two items in the first estate is $20,000, and in the second estate $19,000. Under the amendment $19,000 will be deductible as prior taxed property.

Section 807. Deduction of Bequests, etc., to Charity

The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise. It is evident that where the decedent gives his residuary estate to charity, but by his will directs that such taxes shall be paid therefrom, all that he gives to charity and all that charity is entitled to receive is the residuary estate reduced by the amount of the taxes charged against it; the residuary estate being what is left after the subtraction of such taxes and other charges and prior bequests. This is equally true where, in the absence of such a direction in the will, such taxes under the local law are payable out of the residuary estate.

This amendment restores the sentence appearing in sections 303 (a) (3) and 303 (b) (3) of the revenue act of 1924, which was retroactively repealed by section 323 of the revenue act of 1926.

The Supreme Court on February 18, 1924, in the case of Edwards *v.* Slocum (264 U. S. 61), held that, as a matter of construction, a residuary gift to charity was not to be reduced by the Federal estate tax which was imposed on so much of the estate as the testatrix had bequeathed to individuals. Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity. As a legislative reversal of the decision in that case, the sentence referred to was incorporated in the revenue act of 1924 and covered Federal estate taxes as well as State inheritance taxes where, either by the terms of the will or by the local law, any such tax operated to reduce the amount given to and received by charity. In view of the retroactive repeal of the sentence, the Treasury took the position that the legislative intent thereby indicated necessarily extended both to the Federal estate tax and to State inheritance taxes.

Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

SECTION 808. EXTENSION OF TIME FOR PAYMENT

Under the existing law the commissioner is authorized to extend the time for the payment of the estate tax reported by the executor on the return for a period not in excess of five years from the due date. Under the bill the commissioner is given authority to extend the time for payment of such tax for a period not in excess of eight years from the due date. In the case of a deficiency in estate tax, the commissioner may extend the time for payment for a period not to exceed two years under existing law. This period is changed under the bill from two to four years. The running of the statute of limitations on assessment and collection is suspended for the period of the extension in the case of both the tax reported by the executor and the deficiency.

SECTION 809. LIEN FOR TAXES

This provision reenacts the second sentence of section 315 (a) of the revenue act of 1926, which was repealed by section 613 (b) of the revenue act of 1928, and restores to the commissioner authority for the release of the lien imposed by section 315 (a). Under existing law there is no authority for the release of a tax lien until an assessment has been made. As applied to the estate tax, this limitation has been found to be too onerous. Oftentimes estates require a partial release of lien shortly after the decedent's death and before a return can be prepared or filed, and, if the release must await an assessment, the resulting loss and inconvenience to the estate is manifest.

SECTION 810. REFUNDS

The purpose of this amendment is to remove all question as to the precise effect of a period of limitation on refunds which runs from the payment of the tax. However, contentions in favor of a contrary effect are left open for determination by the courts in cases where refund claims were filed prior to the enactment of the amendments.

Section 811 of House Bill—Revaluation of Depreciated Estates

The House bill contains a provision granting relief retroactively to estates whose assets greatly decreased in value subsequent to their valuation for estate-tax purposes as of the date of death. Under this provision the executor of a decedent who died on or after September 1, 1928, and prior to January 1, 1932, may elect to have the estate valued for estate-tax purposes as of a date 18 months subsequent to the date of death. In such cases, it is provided that the amount to be paid as the tax shall be an amount which bears the same ratio to a tax computed without reference to the provision as the value 18 months after death bears to the value at the date of death, but in no event is this amount to be less than 60 per cent of a tax computed without reference to the provision. Your committee has stricken this provision from the bill. It develops that it will seriously affect not only Federal revenue but also State revenues.

While the loss in revenue to the Federal Government is considerable, such loss is inconsequential as compared with the loss which the States will be forced to bear if this provision is enacted into law. This is due to the fact that many States have enacted legislation taking advantage of the 80 per cent credit provision of the revenue act of 1926. In such cases, 80 per cent of the burden occasioned by such relief must be borne by the States, while the Federal Government bears only 20 per cent of such burden. Many of the States have already collected death duties based upon the valuation of property at the date of death and the amounts collected have already been expended for public purposes. Moreover, it is contended that such a provision will compel the States in many cases to abate outstanding taxes.

Section 811. Future Interests—Extension of Time for Payment of Tax

In cases where there is included in the gross estate the value of a remainder or reversion which will not come into possession until the falling-in of the precedent interest or interests, the payment of the whole amount of the tax at the time now required may occasion considerable hardship. For example, A acquired from his father's estate a remainder in certain property which is to take effect in possession upon the termination of a life estate to B, and A dies during the lifetime of B. Or, A grants to B an estate for the life of B, and dies during B's lifetime. There is included in A's gross estate, the present value of the remainder, or reversion, which passes upon his death, which, although of substantial value, may not be readily salable or readily available as security for a loan. Your committee has therefore added a provision which permits, in such a case, the postponement of payment of the part of the tax attributable to the reversionary or remainder interest or interests until six months after the termination of the precedent interest or interests in the property. The provision, of course, is limited to cases where the property included in the gross estate is the reversionary or remainder interest as such and does not extend to the case where the decedent merely creates future estates by his own testamentary act. Postponement of payment is conditioned, however, upon the giving of bond to secure the payment of the part of the tax attributable to the future estate, with interest from 18 months after the decedent's death.

Credit for such State taxes as are allowed under section 301 (c), attributable to the reversionary or remainder interest, may be allowed if such taxes are paid, and credit claimed, at any time prior to 60 days after the termination of the precedent interest or interests. The bill does not attempt to prescribe details as to the allocation of the tax, or the credit under section 301 (c), to the future estate, or as to the adjustment of the postponed amount as the result of a redetermination of the tax, as all of these matters may more appropriately be covered in the Treasury regulations. This section is also applicable in respect to the additional tax imposed by Title II of this act.

TITLE VII. TAX ON TRANSFERS TO AVOID INCOME TAX

Sections 901, 902, 903, and 904. Tax on Transfers to Avoid Income Tax

The House bill imposes an excise tax upon the transfer of stock or securities by a citizen or resident of the United States or by a domestic corporation to a foreign corporation as paid-in surplus or to a foreign trust. The tax is to be measured by the excess of the value of the stock or securities transferred over the adjusted basis thereof as determined under section 113. Your committee concurs in the need for this tax to prevent avoidance of tax by transferring stock or securities appreciated in value to foreign corporations or foreign trusts prior to the sale thereof, but has concluded that the scope of the section should be enlarged in order the more effectually to accomplish its purpose.

Section 901 has therefore been enlarged to include not only transfers by a citizen or resident of the United States or by a domestic corporation but also transfers by a partnership or by a domestic trust (in contrast to a "foreign trust" as defined in section 903) and, furthermore, to include transfers to foreign trusts, foreign partnerships, and foreign corporations whether made as contributions to surplus or to capital. Section 902, which relieved certain transfers from the tax, has been restricted by the elimination of the portion of the House bill which exempts transfers for adequate and full consideration in money or money's worth. In this connection your committee believes that the bill should not either expressly or by implication permit the argument that an increment in value of shares or of a beneficial interest resulting from a transfer of stocks or securities should be considered full consideration in money or money's worth, and that the presence of a valuable and adequate consideration in a transaction should simply constitute one of the elements of the transaction on which the commissioner should base his conclusion as to whether one of the principal purposes of the plan is to avoid Federal income taxes. Your committee believes that the commissioner should have the widest latitude for the exercise of a sound discretion in the application of this title, both before and after the transfers are carried out.

The definition of a "foreign trust" contained in section 903 of the House bill has been slightly changed. Under the amended definition a trust is classified as "foreign" if the profit from the assumed sale of the transferred property would not be included in the gross income of the trust, the classification not being made dependent upon whether or not such profit would be taxable to the trust. This change removes any doubt concerning trusts the income of which is currently distributable and therefore never taxed to the trust under the income tax title.

Section 904 has been enlarged to give the commissioner power, under proper regulations, to abate, remit, or refund a tax imposed, assessed, and/or collected under this title, if the commissioner is satisfied that the transfer was not made in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes; this provision is likewise designed to afford the commissioner a wide latitude in his examination of the transaction as carried out and his determination in respect thereof. Otherwise, the new draft of this section follows the House bill in prescribing that the tax becomes due and payable by the transferor at the time of the transfer and in giving the commissioner authority to prescribe regulations for its assessment and collection.

TITLE VIII. ADMINISTRATIVE AND GENERAL PROVISIONS

SECTION 1101. REVIEW OF DECISIONS OF THE BOARD OF TAX APPEALS

Section 1001 (a) of the revenue act of 1926 has been amended to reduce the period within which a petition for review of decisions of the Board of Tax Appeals may be filed from six months to three months after the decision of the board is rendered. This action brings the rule governing the period within which a petition for review of Board of Tax Appeals decisions may be filed into harmony with the rule governing the time in which a petition for review of decisions of district courts of the United States may be filed; such period was reduced from six to three months some years ago and your committee sees no reason why a longer period should be allowed in board cases than in court cases. It is believed that this change would expedite the final closing of cases and will result in considerable saving of interest both to the Government and to the taxpayer. The rule is made to apply only in the case of decisions rendered after the passage of the act.

SECTION 1102. BOARD OF TAX APPEALS—FEES

Under existing law the board is authorized to fix a fee for preparing and comparing a transcript of the record, but no authority is given the board to fix a fee for furnishing certified copies of other miscellaneous documents. It has become an almost daily practice for taxpayers or their attorneys to call upon the board for certified copies of miscellaneous documents. The proposed bill remedies this situation by giving the board authority to fix a fee for copying any record, entry, or other paper, and the comparison and certification thereof.

Section 1103. Limitation on Suits by Taxpayers

Section 3226 of the Revised Statutes, as amended by section 1113 of the revenue act of 1926, provided generally that no suit or proceeding for the recovery of internal-revenue taxes, penalties, or sums may be brought after the expiration of five years from the date of payment of such taxes, etc., unless such suit is begun within two years after the disallowance of the part of the claim for refund or credit to which the suit relates. Under the existing law, the exact date of disallowance is sometimes difficult of ascertainment with the consequent uncertainty in such cases as to when the statute of limitations on suits begins to run. Moreover, the use of the two periods (five years and two years) which run from the happening of different events tends to confusion. Your committee is of the opinion that the best interests of all parties concerned will be served by an amendment which makes the date of disallowance of the claim absolutely certain in every case and which specifies but one limitation period after that date. Accordingly, the bill requires the mailing of a notice of disallowance by registered mail, and the bringing of a suit or proceeding within two years from the date of such mailing. Suits or proceedings instituted before the enactment of this bill and suits or proceedings instituted after the enactment of this bill based upon claims or parts of claims which were disallowed prior to the enactment of this bill, are not affected by the amendment and remain subject to the limitations provided in the existing law.

Section 1104. Date of Allowance of Refund or Credit

Under the practice once prevailing in the Bureau of Internal Revenue the commissioner first signed a schedule of overassessments, which fixed the amount of the taxpayer's overassessment, and later, after the collector had made appropriate adjustments to the taxpayer's account in accordance with this schedule, signed a schedule of refunds and credits, which formally approved the action so taken and directed the making of any money payments due the taxpayer. In recent years the schedule of refunds and credits has been abandoned; the commissioner's final action consists in signing the schedule of overassessments, which in itself contains complete directions as to the further steps to be taken toward abating, crediting, or refunding the overassessments entered on the schedule. Some question has arisen as to whether certain court decisions, rendered upon the basis of the previous practice and holding that the allowance of the refund or credit takes place upon the signing of the second schedule, are applicable under the new practice. The provisions of this section, added by your committee, establish a rule which accords with the practice of the Treasury and permits the allowance of refunds and credits with the minimum of difficulty to the Government and the taxpayers as well. It protects the interests of small taxpayers particularly, who may not learn of any refund or credit which may properly be due them in sufficient time to file a claim and may lose the benefit thereof unless the commissioner by signing the schedule of overassessments can make the allowance within the statutory period. In order to settle any question as to the commissioner's allowance of a number of small refunds and credits in cases recently arising, your committee has made the provisions of this section retroactive to the date of the enactment of the 1928 act.

Section 1105. Jeopardy Assessment

This section authorizes prompt collection of internal-revenue taxes (other than income taxes, which are provided for under existing law) when the commissioner finds that delay until the due date fixed by law would jeopardize collection. Provision is made for postponement until the due date fixed by law if the taxpayer furnishes proper security.

Section 1106. Refunds of Miscellaneous Taxes

This section amends section 3228 of the Revised Statutes so as to expressly prohibit refund of the portion of any taxes paid more than four years before the filing of the claim (or allowance of the refund, if no claim was filed).

Section 1107. Special Disbursing Agents of the Treasury

This section permits internal-revenue agents in charge of divisions to act as special disbursing agents of the Treasury for the payment of all salaries and expenses of such divisions upon the giving of sufficient bond. The Treasury for some time has had a revenue agent designated as disbursing officer to pay the salaries of employees. The Comptroller General has raised some question as to whether this was authorized under the law contending that a collector is the only one authorized to act as disbursing officer. This amendment is made to remove any question as to the right of revenue agents to act as disbursing officers of the Treasury.

Section 1108. Refund of Taxes for Taxable Year 1918

Prior to the revenue act of 1924, claims for refund were required to be filed within five years from the time the return was due. Under the revenue act of 1924 and subsequent acts, the time for filing refund claims was changed, the period being reckoned from the date of payment of the tax instead of the due date of the return. In making this change from the 1921 act, the 1924 act included a saving clause permitting claims for refund for the years 1919 and 1920 to be filed within five years from the time the return was due. The year 1918 was inadvertently omitted from the saving clause, presumably on the theory that the 5-year period in such a case had expired prior to the enactment of the 1924 act. This assumption has been found to have been in error. The provisions of the revenue act of 1924 were incorporated into the revenue act of 1926. Your committee corrects this error by inserting in the saving clause of section 284 (h) of the revenue act of 1926, the year 1918.

SECTION 1109. JOINT VENTURES, SYNDICATES, POOLS, AND OTHER SIMILAR ORGANIZATIONS

Some confusion has existed over the requirements of the prior acts as to the time and manner of returning income from the operations of joint ventures, syndicates, pools, and similar organizations. If the syndicate was not an association, partnership, or trust within the meaning of the act there was no express requirement in the act or regulations for the filing of a syndicate return, and the sole responsibility of making returns of the annual gains and losses of the syndicate was placed upon the several members. Quite frequently, however, the members of such a syndicate overlooked the necessity of their making returns each year of their shares in the annual gains and losses from syndicate operations and assumed that they were required only to make returns of their shares in the ultimate gain or loss from the entire syndicate operations in the year when the syndicate was wound up or liquidated. Moreover, a strict observance of the letter of the prior acts would have required each member to determine his annual share in the syndicate gains or losses upon the basis of his own accounting period and according to his own method of accounting, irrespective of the accounting period or method of accounting upon which the books or records of the syndicate were kept.

The bill does away with this uncertainty by placing all joint ventures, syndicates, pools, and similar organizations, which do not constitute associations or trusts, in the category of partnerships, and the members of such syndicates, pools, etc., in the category of partners. This provision will have the effect of requiring the syndicate to file a partnership return and will thus make it easier for the members to determine the distributive shares in the syndicate gains and losses which are to be included in their own returns.

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72D CONGRESS } SENATE { REPT. 665
1st Session } { Part 2

REVENUE BILL OF 1932

MAY 9 (calendar day MAY 11), 1932.—Ordered to be printed

Mr. WALSH, of Massachusetts, from the Committee on Finance, submitted the following

MINORITY VIEWS

[To accompany H. R. 10236]

We emphatically dissent from the inclusion in the revenue bill as reported by the Finance Committee, of the tariff duties on oil, coal, copper, and lumber, masquerading as excise taxes. We regard the inclusion of these tariffs in the present bill, under all the circumstances, as utterly indefensible. We believe that it is unsound in principle and dangerous in practice to attempt to make the present revision of our domestic tax-laws the vehicle for tariff tinkering. Furthermore the prospective revenue yield of these proposed tariff taxes is negligible.

More important is the fact that these tariffs, at best, will be of doubtful benefit to domestic producers, may adversely affect domestic consumers and will work most certain injury to our foreign trade and our foreign relations. The probable ultimate consequences of this further attempted tampering with a desperately sick economic situation throughout the world may well occasion the gravest apprehension.

No argument has been advanced in favor of the present tariff proposals on oil, coal, copper, and lumber that was not presented to and rejected by the Congress in the framing of the Smoot-Hawley Tariff Act of 1930, other than the fact that these industries are in a more depressed state now than then, and their necessities for relief more urgent now than at that time. The same may be said for every other industry in the country, and if the distress of American industry is to be the excuse and justification of new tariff levies of increased tariff rates and of embargoes, then why stop with oil, coal, copper, and lumber; why single them out for special tariff favor?

An outstanding factor in regard to all of the industries which would be protected by these new tariffs is the point that each has been primarily an export industry and continues to export a substantially larger value of products annually than it imports. Thus, even in the depression year of 1931, the net balance of exports over imports for the items for which duties have been proposed was as follows: Petroleum and products, $177,758,000; coal, $54,984,000; lumber, rough and planed, $29,830,000; copper, $6,003,000; coke, $3,494,000.

In other words, it is proposed to risk the loss of an export trade which amounted even in a very poor year to $440,000,000—18⅓ per cent of our entire foreign business, for the sake of eliminating an import business valued at $175,000,000. It is elimination or embargo of imports that is the real objective of the proponents of these tariffs, and if the proposed duties were successful in raising domestic prices they would most certainly make it impossible for the American products affected to compete with the excluded imports in world markets and would decrease to that extent at least the volume of our export trade.

However, the results of these new tariffs upon American foreign trade would not be confined to the items immediately affected. Canada, which furnishes us with lumber and copper, Venezuela, Colombia, and Mexico, which supply us with petroleum, and Chile and Peru, which send us copper, would all be seriously irritated by these embargoes against their trade and would most certainly retaliate with countermeasures to exclude exports of American manufactures.

A further important consideration is the fact that the proposed tariffs on copper involves a readjustment upward of a host of other tariff rates. Every article of import in which copper has a part is to take an equivalent compensatory duty. Thus with the stroke of a pen it is proposed to alter the cost and the price of hundreds of articles in common use. The resulting upset and confusion in trade and commerce is self-evident.

In the final analysis, therefore, the tariff items in the revenue bill will raise little, if any, revenue, will seriously disrupt our foreign trade; no benefit will accrue to the domestic industries involved unless they result in increased prices in the home market; and if increased prices do result, to that extent a new burden is laid upon the already impoverished and overtaxed consumer.

OIL

With respect to the proposed duties on petroleum products it is to be noted that the total domestic production of crude petroleum in 1931 amounted to 850,261,000 barrels; total imports of crude and refined petroleum products amounted to 86,082,000 barrels; total exports of crude and refined petroleum products and bunker fuel oil amounted to 168,229,000 barrels. Our exports were twice our imports and our imports about 10 per cent of our domestic production.

Witnesses before the committee for and against these oil-tariff proposals were in hopeless disagreement as to almost every essential phase of the controversy. The proponents contended that these tariffs would yield large revenues to the Government because they would not operate as an embargo on imported oil and gasoline. They claimed the imports would come in just the same; that the tariff of 2½ cents per gallon would be without effect on the price of gasoline in the American market; that the rate of 1 cent per gallon on crude and fuel oil as carried in the House bill (the Senate bill as reported carries a rate of one-half cent per gallon) was insufficient to measure the difference in cost of production here and abroad. They further stated the tariff would not substantially increase prices of crude and fuel oil in the home market, hence would be no burden upon the consumer and yet that these tariffs would be a priceless boon to the hard pressed and depressed domestic oil industry.

The opponents contended that the tariffs would act as an embargo, would yield no revenue, would raise the price of fuel oil and gasoline to the American public by the full amount of the tariff and more, would operate as a tax upon our own citizens of hundreds of millions of dollars annually and all for the enrichment of a group of major oil companies who own 97 per cent of the 623,000,000 barrels of oil in storage. This stored oil comprising 70 per cent of one year's supply.

On the question of revenue yield Secretary of the Treasury Mills replied to a question as to whether a tariff of 1 cent on crude and fuel oil and 2 cents on imported gasoline would produce any revenue as follows:

> In the opinion of the experts of the Department of Commerce such a tax would yield no revenue, since the levy which would be added to the import price exceeds the margin of advantage on which oil is imported to this country and would therefore exclude the products affected.

On the question of the effect of the tariff on the price of oil and gasoline to the American public, since the domestic production of gasoline is so far in excess of domestic requirements and the import of gasoline so relatively trivial (13,621,000 barrels of gasoline were imported in 1931 as compared with a domestic consumption of gasoline of 16,712,000,000 gallons, or 397,905,000 barrels), the extent to which a tariff on gasoline will increase the price to the domestic consumer is perhaps debatable. But with respect to the proposed tariff on crude and fuel oil there can be no doubt that it must either operate to raise the price of crude and fuel oil in the United States or else be of no benefit whatever to the oil industry. The conclusion is inescapable that the imposition of this oil tariff will mean a levy of many millions of dollars annually upon the industries and individuals who are users of fuel oil without any accruing revenue to the Treasury. If this duty becomes effective, the consumers will pay $73,212,000 annually in increased prices for fuel oil.

COAL

The proposed duty on coal and coke as carried in the present bill, in our judgment, is utterly preposterous. According to Department of Commerce figures we exported 13,088,259 tons of coal and coke in 1931 and imported only 836,769 tons, a ratio of 16 to 1 in favor of our exports. The total production of coal and coke in the United States in 1931 was 459,716,104 tons, so that our imports of 836,769 tons represent less than one-fifth of 1 per cent of our total coal and coke production. It is to eliminate this almost infinitesimal amount of imported coal, which does not undersell domestic coal but in fact commands a higher price than the domestic product, that this tariff duty of 10 cents per 100 pounds, $2 per short ton, is in the bill. It will raise no revenue whatever. By the exclusion of the imported coal it will enlarge the potential domestic market by one-fifth of 1 per cent. The proponents of this tariff have but one objective. They hope to displace 600,000 tons of imported anthracite coal now sold in New England with an equal amount of Pennsylvania anthracite.

COPPER

There is no gainsaying the present distress of the American copper industry in the United States. Copper is now selling in New York at around 6 cents per pound. This compares with an average price for the past 30 years (excluding the war years) of 14.8 cents. American copper mines are said to have a potential capacity of 1,318,000 short tons per annum. In 1931 the United States market absorbed roundly 454,500 tons of primary copper and present consumption is lower still, perhaps not in excess of 25 per cent of our producing capacity. Present stocks of copper above ground are said to represent one year's supply for the entire world at present rate of consumption, and the United States alone owns 71 per cent of this stock. Foreign production of copper far outruns foreign consumption. The surplus of foreign copper is displacing domestic copper in our domestic market. What is true of many other commodities applies to copper. The world is suffering from a huge surplus of copper.

The question at issue is whether the erection of a tariff wall against foreign copper will in the long run benefit the country. On that question testimony of opposing copper groups before the Finance Committee was in sharp disagreement.

The proponents of a copper tariff sought a rate of 5 cents per pound and said that they anticipated its effect would be to stabilize the price of American copper in the American market at around 11 cents per pound.

The bill as reported carries a copper tariff at the rate of 4 cents per pound. The contention that despite such a duty foreign copper will still be dumped in this market and pay a duty and hence the Government will derive a tariff revenue from the copper duty is in our judgment unconvincing. We incline to the view that the proposed duty would exclude foreign copper and hence be of no consequence so far as revenue is concerned. On the question of the benefit of the proposed duty to the American copper industry and to the country we are inclined to subscribe to the views presented by those representatives of the industry who oppose the duty and who contend that it will do more harm than good. In any event we submit that the present revenue bill is not the time and place for Congress to deal with the complicated and world-embracing issues which are raised by the question of removing copper from the free list, where it has remained since 1894, and granting compensatory duties to the large number of manufactured products that contain copper.

LUMBER

The petitions for a tariff duty on lumber come from the lumber operators of Oregon and Washington.

No new argument has been advanced for increasing the protective tariff duty on lumber that was not considered by the Congress prior to the passage of the Smoot-Hawley Tariff Act of June 17, 1930. Evidence of course was presented of the present depressed state of the lumber industry. The financial difficulties of operators, unemployment, want, and suffering were stressed. No conditions surrounding this industry were presented that are not applicable at the present time to practically every other industry in the United States. Furthermore, the conditions described in the lumber industry and in the communities where lumber operations are carried on are similar to conditions existing in the lumber communities of Canada. It is even claimed that there has been a higher percentage of failures in this industry in Canada than in this country.

One-half of the lumber (lumber planed or dressed on more than one side) included within this proposal is now subject to a protective duty of $1 per thousand feet. The United States Tariff Commission was importuned, under the flexible provisions of the tariff law, to increase this duty. As late as November 9, 1931, the Tariff Commission reported that a change in the duty of $1 per thousand feet was not warranted. On December 2, 1931, the President approved of this finding.

Advocates of this tariff therefore propose to override the findings of the Tariff Commission and the President, after an exhaustive study into the difference in the cost of production, including transportation, of Canadian lumber, with the like American product. Yet the Finance Committee incorporated the rate of $3 per thousand feet in addition to the present rate of $1 per thousand feet already found to be adequate by the Tariff Commission and the President.

Rough lumber, now on the free list, is to be given a duty of $3 per 1,000 feet. If the Tariff Commission found no justification for increasing the tariff duty on dressed lumber above the present rate of $1, there can be no sound argument in favor of rough lumber being given a duty of $3 per 1,000 feet, especially when it is admitted that there is an element of labor that enters into the cost of dressed lumber as compared with rough lumber. The Tariff Commission found that the difference in total cost of producing rough lumber in Canada and America was 11 cents per 1,000 feet.

The result of an indiscriminate imposition of a tariff tax of $3 per 1,000 feet board measure on many dissimilar items of lumber will cause endless confusion and inequalities to various industries and consumers. This duty, in the absence of a definition of the classes of lumber included would embrace inexpensive and expensive classes of lumber, for it includes all hardwoods, such as mahogany, lignum vitae, maple, and birch—also, all softwoods used in the building of homes and in the manufacture of boxes, crates, containers, cigar boxes, and the like.

The industries affected that might properly claim compensatory duties if the increased duty stands are manufacturers of agricultural implements, hardware, fixtures, caskets, refrigerators, trunks, picture frames, tobacco boxes, toys, pencils, and penholders, brushes, artificial limbs, airplanes, pattern making, and so forth.

The fact that no distinction is made in the duty on lumber on the type used by the farmer and the home builder and lumber used on more extensive construction and industrial projects would result in this duty being equivalent to 33⅓ per cent ad valorem on cheap lumber costing $12 per thousand, and a duty of less than 1 per cent ad valorem on expensive lumber selling at $250 and more per thousand feet (for instance, as used in airplanes and for mahogany paneling in high-priced office buildings and residences).

The burden of the proposed tax would fall upon the consumers of every article of lumber used in the United States. The domestic producers who seek this duty for the purpose of increasing their prices will expect to get the benefit of the duty to the fullest extent possible under the law. Eliminating the effect of pyramiding, the rate of $3 per thousand feet increase of the present duty, based upon an average consumption of about 35,000,000,000 feet, will result in a total cost to consumers in the United States of about $105,000,000 annually.

From the standpoint of producing revenue, the rate is destructive, for it will result in being an absolute embargo. An embargo will be detrimental to the producers as well as to the domestic consumers. Naturally the lumber producers in Canada who will be forced out of the American market will send their lumber elsewhere, causing competition with American exporters of lumber exported to Cuba, South America, China, Japan, and other markets.

The exports of lumber have an annual average of 100 per cent in excess of imports. What the advocates of this duty are seeking is the impossible. They would prevent all countries from selling us goods and, at the same time, expect them to buy from us.

The admission of foreign lumber produced through indentured or forced labor is prevented by existing law. If this law is being improperly enforced, the responsibility is with the executive department. If the law is not effective in preventing the very limited amount of lumber imported from countries suspected of using this class of labor (less than 14,000,000 feet), we favor the enactment of more drastic provisions to control such imports.

CONCLUSIONS

The logrolling methods which have resulted in the incorporation of these particular tariff items, for these items yield no income to the Government worth considering, would be indefensible even if the committee were considering a general revision of the tariff; but to resort to the trades, exchange of votes, and on-again off-again performances that characterize the incorporation of these items in an emergency revenue measure is an exhibition that will raise serious questions in the public mind concerning the capacity of representative government to function promptly and without self-interest in a great emergency. Perhaps the least said about the performance the better. We doubt if even the "victors" are particularly proud of their handiwork.

In brief, these tariff items are riders to a bill whose sole purpose should be to balance the budget and would not be seriously considered by the Congress if proposed in a bill of their own because there are no cogent arguments for their imposition. We urge that these "log-rolled" tariffs in a bill seeking to balance the budget deficiency be rejected by the Senate as they have already been repudiated and condemned by the public sentiment of the country, regardless of party or personal views concerning the protective principle.

PAT HARRISON.
WALTER F. GEORGE.
DAVID I. WALSH.
EDWARD P. COSTIGAN.
CORDELL HULL.

In the absence of an opportunity to read and check all of the foregoing Minority Views, I concur in the dissent of the minority for the reasons well stated in the opening paragraph.

EDWARD P. COSTIGAN.

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REVENUE BILL OF 1932

May 9 (calendar day, May 27), 1932.—Ordered to be printed

Mr. Walsh, of Massachusetts, from the Committee on Finance, submitted the following

PERSONAL VIEWS

[To accompany H. R. 10236]

EXPLANATORY OF AMENDMENT TO H. R. 10236, PROVIDING FOR AN EMERGENCY MANUFACTURERS' EXCISE TAX

I present my views explaining the amendment known as the emergency manufacturers' excise tax, which I shall move for adoption by the Senate, and submit a brief explanation of each section of the amendment.

SEC. 602. GENERAL MANUFACTURERS' EXCISE TAX—IMPOSITION

The rate is fixed at 1¾ per cent. The yield on this rate is expected to be about $335,000,000.

The machinery set up for the imposition of this tax is what is known as the license system in distinction from the two other systems, known as the turn-over tax and the tax on value added by the manufacturer, which would be determined by deducting from the wholesale price the cost of purchases of materials. After careful consideration of these three different methods, the Ways and Means Committee of the House unanimously reached the conclusion that the licensing system was the best of the three. It is substantially the same as the Canadian system.

The turn-over tax system, which is popularly called a general sales tax, is objectionable on the ground of pyramiding the price of commodities because of the collection of taxes at different stages in the process of manufacture. It is possible, however, that the yield would be so much more in a general sales tax, thereby the rate being made much less, that the net result would not be more burdensome.

The licensing system, briefly stated, is as follows: Every manufacturer or producer doing a gross business of over $20,000 a year is required to take out a license through the Treasury Department. The tax is imposed on all sales by these licensed manufacturers, except in the case of specifically exempted articles, and except in the case of articles sold to other licensed manufacturers for further manufacture. This eliminates the imposition of successive taxes at different stages of manufacture, so that the net result is one tax on the sale of the finished article by the last manufacturer.

★ 5-27-32.

The licensing system also provides for the registration of certain dealers who sell partly manufactured articles to licensed manufacturers for further manufacture.

The licensing of manufacturers is limited to those doing business of over $20,000 a year for administrative reasons, to eliminate a large number of small taxpayers the yield from whom would not justify the cost of collection. In the Canadian law option is given to the administrators of the law to eliminate small manufacturers from the tax. This amount of $20,000 was fixed by the Ways and Means Committee as the best division that could be made as between small producers and manufacturers who do a very limited business and those who manufacture on a more extensive scale. The exemption of these small manufacturers does not mean a total loss of the tax, because the sale of materials to them is taxed, while the licensed manufacturers do not have to pay a tax upon the sales of goods to them because they pay the tax upon those goods in the value of the finished product.

In order that this tax shall not operate as a disadvantage to domestic manufacturers as compared with importers, a corresponding tax of 1¾ per cent is imposed on the duty-paid value of all imported articles.

The only articles not reached by this tax are those which are sold to or imported for a State or political subdivision thereof, for use solely in the exercise of governmental functions. Under the Constitution, we could not tax sales to the States. It would be possible to exempt sales to the United States Government, but this amendment does not provide for such a case.

(1) Food for human or animal consumption (including tea and coffee). This is substantially the same as was finally incorporated in the House bill. However, the committee's original recommendation only included certain specified classes of food.

(2) Medicines: Patent or proprietary medicines are to be taxed. The exempt medicines would be the standard medicines, such as those listed in the United States Pharmacopœia, and medicines generally prescribed by physicians or used in compounding prescriptions. This would mean that medicines like "Peruna," "Tanlac," "Father John's Medicine," and numerous others assumed to be manufactured at a profit, would be taxed under "patent or proprietary medicines."

(3) Wearing apparel: The House made no exceptions as to the cost of wearing apparel. This amendment provides that manufacturers of shoes selling for more than $5 a pair at wholesale shall be subject to the tax, and other articles of wearing apparel sold at a price in excess of $35 each at wholesale shall be subject to a manufacturers' excise tax. This limitation of $35 is fixed for the purpose of permitting coats and overcoats at moderate prices to be given the benefit of the exemptions. It is our belief that fixing the limitation at $35 would exempt suits, overcoats, and cloaks selling at retail under $50.

(4) Agricultural products: This would include everything produced on the farm.

(5) Agricultural implements and machinery and parts thereof, including gas and electricity employed in farm use or for irrigation or other farm purposes.

(6) Workmen's hand tools.

(7) Fertilizers.

(8) Articles already taxed under the internal revenue laws. This would exempt tobacco, which already pays a large internal-revenue tax, and other articles which pay a revenue tax, such as playing cards, pistols, and oleomargarine.

(9) Newspapers, magazines, and other periodicals: The publishers of these periodicals will not have to pay a tax but a tax will be imposed upon the manufacturers of the materials used, such as paper, ink, machinery. That probably means about as much revenue as if the tax was put upon the publishers themselves. Another reason for this inclusion is based upon the theory that these newspapers, magazines, and periodicals are either of educational, charitable, or religious service.

SEC. 603. TAX ON SALES BY REGISTERED DEALERS

This is an administrative feature. It provides that if a dealer sells other than to a licensed manufacturer any article he has purchased free of tax for resale to a licensed manufacturer he pays the tax.

SEC. 604. SALE PRICE

This gives rules for determining sales price in specific cases.

(*a*) The general rule. It provides for the inclusion of all charges incident to placing the article in condition for shipment and for the exclusion of transportation, delivery, and similar charges.

(*b*) In the case of a sale on consignment the price shall be a fair manufacturer's price for the article.

(*c*) Where the manufacturer or producer, as happens in some cases, sells at retail, the tax shall be imposed on the price at which sold, except that in the case of any such article ordinarily sold at wholesale (or directly to the consumer or user at prices varying with the quantity or character of use) by manufacturers or producers the tax shall be imposed upon the fair manufacturer's price for the article.

The parentheses is for the purpose of providing that the tax on the price of electricity shall be on the wholesale price rather than actual selling price.

(*d*) Installment sales: Taxes imposed on each installment when paid.

(*e*) Leases and royalties: The tax is imposed on each payment under the lease or royalty contract when the payment is made. The royalty contracts, of course, are only those involving articles taxable under this amendment.

(*f*) Manufacture under contract: This paragraph prevents avoidance of the tax in cases where one person contracts with another for the manufacture of an article.

(*g*) Use or transfer of article in special cases:

This covers cases where—

(1) A person manufactures articles for his own use.

(2) Where a person transfers a title by gift.

This would cover free samples, and so forth.

(3) Transfers an article as less than fair market price.

This would apply particularly to transfers between affiliate companies where it is possible to establish fictitious prices.

(*h*) Defines the fair manufacturers' price.

SEC. 605. OVERPAYMENTS, CREDITS, AND REFUNDS

This provides for credits and refunds of the tax in cases where a manufacturer has bought tax-paid materials and used them in the manufacture of articles on which he pays a tax, in cases where tax-paid articles are exported, and in cases where the sale price on which the tax is based is readjusted because of the return of the article or container, or by a discount, rebate, or allowance.

Provision is made that the manufacturer can not get credit or refund of any tax which he has passed on to the purchaser, unless he repays the amount of the tax to the person to whom it was passed on or obtains the consent of that person.

SEC. 606. LICENSED MANUFACTURERS AND REGISTERED DEALERS

This section simply provides machinery for issuing licenses.

SEC. 607. RETURNS, RECORDS, AND PAYMENT AND COLLECTION OF TAX

This is administrative.

SEC. 608. EVASION OF TAX

This contains administrative provisions to prevent evasion of tax.

SEC. 609. TAX ON MANUFACTURER OR PRODUCER NOT LICENSED

Provides that if somebody who was not licensed, and therefore does not pay any tax on his sales, represents that his price includes a tax, he is made liable for the amount of that tax.

SEC. 610 CONTRACTS FOR SALE ENTERED INTO BEFORE MARCH 1, 1932—REGULATED RATES

The imposition of an excise tax on the manufacturer or producer of an article becomes at once one element in his cost of production, and is reflected in the price which he must obtain or will obtain for the article. In order, therefore, that all manufacturers and producers may be put upon the same footing and upon an equality in competitive situations, and to avoid injustice and discrimination, it is provided that in the case of contracts made prior to March 1, 1932, and in the case of articles where the sales price is fixed by governmental regulation, the purchaser shall be liable for the tax, which will ordinarily be collected from him and paid over to the Government by the seller.

The March 1, 1932, date is an arbitrary one, and is the same date as was provided for in the House bill. In fixing this date it was thought that since that time the public has had notice of the possibility of some form of manufacturers' excise tax being levied, and that contracts entered into since that date have provided for that contingency and have provided for the purchaser assuming the tax or for the price of the article to be increased by the amount of the tax if such a tax were levied, but that in the case of contracts prior to March 1 the manufacturer or producer could not have been expected to anticipate such a tax, and therefore is fairly entitled to the protection which is afforded to him by the provisions of section 610.

In the case of regulated rates, we are called upon to deal with the situation which is presented when we propose to impose an excise tax upon an article the sales price of which is fixed by governmental regulation. With respect to gas and electricity, the rates have been fixed without any reference to the excise tax now proposed to be imposed. Rate revisions are long and complicated processes, and so just as we permit other manufacturers and producers who have entered into contracts without contemplation of or provision for this excise tax, so in the case of the producers of gas and electricity we provide that the vendee rather than the vendor shall be liable for the tax. Not to do so would be to discriminate against a single industry, and as to it to impose a tax which could not be passed on, while as to every other industry the tax was passed on.

SEC. 611. FINAL AGREEMENTS

A number of difficult questions with respect to the tax under this title, such as the determination of the fair manufacturers' price, will arise between the department and the taxpayers. This section should reduce litigation, since it provides that the Government and the taxpayer may make a final agreement governing such doubtful points for the past or future, which agreement is absolutely binding on both parties. The experts of the Treasury who have been consulted in drafting this bill considered this an important provision and that it will facilitate administration of this law.

It s very important in levying a tax of this kind that the manufacturer shall know what his liability will be, and by having an agreement entered into with the Government he will know definitely and can rely upon the assurance of the Government as to what his liability will be.

SEC. 612. EFFECT OF CHANGES IN ADMINISTRATIVE DECISIONS

This provides that the revocation or amendment of any regulation or ruling of the department shall not have the retroactive effect of increasing any person's liability with respect to sales made before such revocation or amendment.

SEC. 613. APPLICABILITY OF ADMINISTRATIVE PROVISIONS

This simply provides for the application to this tax of provisions of existing law.

SEC. 614. PENALTIES

The penalty for violation is fixed at one-half the amount of tax evaded; or if that can not be determined, not more than $1,000; or six months' imprisonment, or both.

SEC. 615. EXCLUSION OF TAX FROM GROSS INCOME

This section is put in to prevent any person other than the one who paid the tax to the United States claiming it as a deduction from gross income on the ground that, since it was passed on to him, he can deduct it as a tax paid by him. This is a precautionary measure.

SEC. 616. REGULATIONS

This provides for all necessary rules and regulations to administer the provisions of this law.

SEC. 617

NOTE.—The definition of "article" includes gases and electricity. These definitions are substantially the same as the House provision.

SEC. 618. PERSONNEL

This was a Treasury recommendation that the Ways and Means Committee accepted.

SEC. 619. EFFECTIVE DATE—DATE OF EXPIRATION

This fixes the date when the provisions of the act shall take effect as the thirtieth day after enactment of the act, except the provisions for final agreements and for regulation are to take effect immediately. The last sentence provides for the termination of this tax on June 30, 1934.