

U. S. TREASURY DEPARTMENT

BUREAU OF INTERNAL REVENUE

REGULATIONS 91

RELATING TO THE

EMPLOYEES' TAX AND
THE EMPLOYERS' TAX

UNDER TITLE VIII OF THE

SOCIAL SECURITY ACT

See Int. Rev. Bul. #50

*Dec. 12, 1938
for amendments*



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The Internal Revenue Bulletin service for 1937 will consist of weekly bulletins and semiannual cumulative bulletins.

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INTRODUCTORY

These regulations relate to the employees' tax and the employers' tax imposed by Title VIII of the Social Security Act, approved August 14, 1935 (Public, No. 271, Seventy-fourth Congress; 49 Stat. 620).

Chapter I defines terms that are used in the Act and in these regulations.

Chapter II deals with the employees' tax.

Chapter III deals with the employers' tax.

Chapter IV deals with returns, payment of tax, and records.

Chapter V deals with erroneous collection and payment of tax, including the adjustment thereof.

Chapter VI contains miscellaneous provisions and deals with jeopardy assessments, interest, and penalties.

The applicable provisions of the Act, as well as certain applicable provisions of internal revenue laws of particular importance, will be found in the appropriate places in, and are to be read in connection with, these regulations.

For convenient reference, see the Treasury Decision relating to the assignment of account numbers to employees and identification numbers to employers under Title VIII of the Act, printed in the Appendix to these regulations.

CHAPTER I

DEFINITIONS

SECTION 1101 (a) AND (b) OF THE ACT

(a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

(2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

SECTION 811 OF THE ACT

When used in this title—

(a) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

(b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Casual labor not in the course of the employer's trade or business;

(4) Service performed by an individual who has attained the age of sixty-five;

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;

(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

SECTION 11 OF THE CARRIERS TAXING ACT

The term "employment", as defined in subsection (b) of section 811 of Title VIII of the Social Security Act, shall not include service performed in the employ of a carrier as defined in subdivision (a) of section 1 of this Act.

ARTICLE 1. General definitions and use of terms.—As used in these regulations—

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.

(b) *Person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(c) *Act* means the Social Security Act (Public, No. 271, Seventy-fourth Congress; 49 Stat. 620).

(d) *Carriers Taxing Act* means the Act entitled "An Act To levy an excise tax upon carriers and an income tax upon their employees, and for other purposes", approved August 29, 1935 (Public, No. 400, Seventy-fourth Congress; 49 Stat. 974).

(e) *Tax* means either the employees' tax or the employers' tax as respectively defined in this article.

(f) *Employees' tax* means the tax imposed by section 801 of the Act.

(g) *Employers' tax* means the tax imposed by section 804 of the Act.

(h) *Secretary* means the Secretary of the Treasury.

(i) *Commissioner* means the Commissioner of Internal Revenue.

(j) *Collector* means collector of internal revenue.

(k) *Social Security Board* means the board established pursuant to Title VII of the Act.

(l) The cross references in these regulations to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

SECTION 811(b) OF THE ACT

The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *

ART. 2. Employment.—All services performed within the United States by an employee for his employer, unless specifically excepted by section 811 (b) of the Act or section 11 of the Carriers Taxing Act, constitute "employment" within the meaning of Title VIII of the Act. To constitute an employment the legal relationship of employer and employee must exist between the person for whom the services are performed and the individual who performs them, and the services involved must be performed within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii. (See articles 3 and 4 as to who are employees and employers, respectively, and articles 5 to 13, inclusive, relating to excepted services.)

To the extent that an employee performs services outside of the United States for the person who employs him, he is not in an employment.

The place where the contract for services is entered into and the citizenship or residence of the employee or of the employer are immaterial. Thus, the employee and the employer may be citizens and residents of a foreign country and the contract for the services may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent an employment within the meaning of Title VIII of the Act.

ART. 3. Who are employees.—Every individual is an employee within the meaning of Title VIII of the Act if he performs services in an employment as defined in section 811(b) (see article 2).

However, the relationship between the person for whom such services are performed and the individual who performs such services must as to those services be the legal relationship of employer and employee. Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to *what* shall be done but *how* it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the per-

son possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

Title VIII of the Act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation, but a director, as such, is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

ART. 4. Who are employers.—Every person is an employer who employs one or more individuals in an employment, that is, for the performance within the United States of services not specifically excepted. The number of individuals employed by the employer and the period during which any such individual is so employed is immaterial. (For definition of employment see article 2, and for excepted services see articles 5 to 13, inclusive.)

An employer may be an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian,

committee, trustee, executor or administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, or conservator.

SECTION 811(b) OF THE ACT

The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *

ART. 5. Excepted services generally.—Even though an individual performs services within the United States for the person who employs him, if the services are of a class which is specifically excepted by section 811(b) of the Act or section 11 of the Carriers Taxing Act, they are excluded for the purposes of the tax.

The exception attaches to the services performed by the employee and not to the employee as an individual; and the exception applies only for the period during which the individual is rendering services in an excepted class.

Example: A, who operates a farm and also a grocery store, employs B for \$10 a week. B works on the farm five days of the week and works for one day of the week as a clerk in the grocery store. If the services which B performs on the farm constitute "agricultural labor" (see article 6), such services are excepted; the services performed as a clerk in the grocery store are, however, not excepted. In computing the amount of "wages" paid to B the part of the weekly salary of \$10 which is attributable to the work on the farm is excluded, while the amount which is attributable to the work performed in the grocery store is included.

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

(1) Agricultural labor; * * *

ART. 6. Agricultural labor.—The term "agricultural labor" includes all services performed—

(a) By an employee, on a farm, in connection with the cultivation of the soil, the raising and harvesting of crops, or the raising, feeding, or management of live stock, bees, and poultry; or

(b) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute agricultural labor, however, unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming

operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms, plantations, ranches, ranges, and orchards.

Forestry and lumbering are not included within the exception granted by section 811(b).

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

* * * * *
(2) Domestic service in a private home; * * *

ART. 7. Domestic service.—Services of a household nature performed by an employee in or about the private home of the person by whom he is employed are within the above exception.

A private home is the fixed place of abode of an individual or family.

If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, fraternity houses, clubs, hotels, or commercial offices or establishments.

Services performed as a private secretary, even though performed in the employer's home, are not within the exception.

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

* * * * *
(3) Casual labor not in the course of the employer's trade or business; * * *

ART. 8. Casual labor not in the course of employer's trade or business.—The term "casual labor" includes labor which is occasional, incidental, or irregular.

The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

Thus, labor which is occasional, incidental, or irregular, *and* does not promote or advance the employer's trade or business is excepted.

Example 1: A's business is that of operating a sawmill. He employs B, a painter, at a daily wage to paint his home. B's labor is casual and is not in the course of A's trade or business—that of operating a sawmill. B's services to A are therefore excepted.

Casual labor, that is, labor which is occasional, incidental, or irregular, but which *is* in the course of the employer's trade or business does not come within the above exception.

Example 2: A's business is that of operating a sawmill. He employs B for two hours, at an hourly wage, to remove sawdust from his mill. B's labor is casual since it is occasional, incidental, or irregular, but it is in the course of A's trade or business—that of operating a sawmill—and is not excepted.

Example 3: A is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks are casual, they are in the course of the employer's trade or business and, therefore, not excepted.

Casual labor performed for a corporation does not come within this exception.

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

(4) Service performed by an individual who has attained the age of sixty-five; * * *

ART. 9. Employees who have attained age 65.—Services performed by an individual after he has attained the age of 65 years are excepted. The employer has the burden of establishing to the satisfaction of the Commissioner the age of any employee whose services are claimed to be excepted by reason of his having attained the age of 65. All services performed by an individual on and after the day preceding the sixty-fifth anniversary of his birth are within this exception. (See article 403, relating to information returns.)

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country; * * *

ART. 10. Officers and members of crews.—The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers,

surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

The word "vessel" includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "vessel documented under the laws of the United States or of any foreign country" means a vessel which is registered, enrolled, or licensed in conformity with the laws of the United States or any foreign country.

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

- * * * * *
- (6) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- (7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions; * * *

ART. 11. Government employees.—Services performed by Federal and State employees are excepted. The exception extends to every service performed by an individual in the employ of the United States, the several States, the District of Columbia, or the Territory of Alaska or Hawaii, or any political subdivision or instrumentality thereof, including every unit or agency of government, without distinction between those exercising functions of a governmental nature and those exercising functions of a proprietary nature.

SECTION 811(b) OF THE ACT

The term "employment" means any service * * * except—

- * * * * *
- (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

ART. 12. Religious, charitable, scientific, literary, and educational organizations and community chests.—Services performed by any employee of an organization of the class specified in section 811(b) (8) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

In all cases, in order to establish its status under the statutory classification, the organization must meet two tests:

- (1) It must be organized and operated exclusively for one or more of the specified purposes; and
- (2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

An educational organization within the meaning of section 811(b)(8) of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 811(b)(8) of the Act.

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in section 811(b)(8) of the Act.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

If an organization has established its status under section 811(b)(8) of the Act, it need not thereafter make a return or any further showing with respect to its status under Title VIII of the

Act unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all such organizations, to the end that they may occasionally inquire into their status and ascertain whether they are observing the conditions upon which their classification is predicated.

SECTIONS 1(a), (b), AND (c), AND 11 OF THE CARRIERS TAXING ACT

SECTION 1. That as used in this Act—

(a) The term "carrier" means any express company, sleeping-car company, or carrier by railroad, subject to the Interstate Commerce Act, and any company which may be directly or indirectly owned or controlled thereby or under common control therewith, and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of and operating the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

(b) The term "employee" means (1) each person who at or after the enactment hereof is in the service of a carrier, and (2) each officer or other official representative of an "employee organization", herein called "representative", who before or after the effective date has performed service for a carrier, who is duly designated and authorized to represent employees under and in accordance with the Railway Labor Act, and who, during, or immediately following employment by a carrier, was or is engaged in such representative service in behalf of such employees.

(c) A person shall be deemed to be in the service of a carrier whenever he may be subject to its continuing authority to supervise and direct the manner of rendition of his service, for which service he receives compensation.

SEC. 11. The term "employment", as defined in subsection (b) of section 811 of Title VIII of the Social Security Act, shall not include service performed in the employ of a carrier as defined in subdivision (a) of section 1 of this Act.

ART. 13. **Carrier employees.**—Services performed as an employee of a carrier, within the meaning of the Carriers Taxing Act, are excepted. Services performed for an organization of such employees by a representative within the meaning of the Carriers Taxing Act

are also excepted; and this exception extends not only to services in his capacity as a representative, but also to any other services performed by him for the organization. See Regulations 93, articles 3 and 5, for definitions of employee and representative under such Act.

SECTION 811(a) OF THE ACT

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

SECTION 1101(c) OF THE ACT

Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

ART. 14. Wages.—The term "wages" means all remuneration for employment (see article 2). If, however, the remuneration paid for employment performed during any calendar year by an employee for the same employer exceeds \$3,000, the term does not include that part of such remuneration in excess of the first \$3,000 thereof.

The \$3,000 limitation applies only if the remuneration received by an employee from the same employer for employment during any one calendar year exceeds \$3,000. The limitation relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid or received in any one calendar year.

Example 1: Employee A, in 1937, receives \$2,500 from employer B on account of \$3,000 due him for services performed in 1937. In 1938 A receives from employer B the balance of \$500 due him for services performed in the prior year (1937) and also \$3,000 for services performed in 1938. Although A actually receives total remuneration of \$3,500 during the calendar year 1938, that entire amount is subject to tax, i. e., \$3,000 with respect to employment during 1938 and \$500 with respect to employment during 1937 (this \$500 added to the \$2,500 paid in 1937 constitutes the maximum wages which could be received from any one employer by A, with respect to employment during the calendar year 1937).

If the employee has more than one employer during the calendar year, the limitation of wages to the first \$3,000 of remuneration

received applies to remuneration received from *each* employer with respect to employment during that year.

Example 2: Employee A receives from employer B a salary of \$600 a month for employment by B during the first seven months of 1937, or a total remuneration of \$4,200. At the end of the fifth month A has received \$3,000 from employer B, and only that part of his total remuneration from B constitutes wages, subject to the tax. The \$600 received by employee A from employer B for employment during the sixth month, and the like amount received for employment during the seventh month is not included in wages and is not subject to the tax. At the end of the seventh month A leaves the employ of B and enters the employ of C. A receives remuneration of \$600 a month from C for the remaining five months of 1937, or a total remuneration of \$3,000 from C. The entire \$3,000 received by A from C constitutes wages and is subject to the tax. Thus, the first \$3,000 received from B and the entire \$3,000 received from C constitute wages.

Example 3: A is simultaneously an officer (an employee) of the X corporation, the Y corporation, and the Z corporation during the calendar year 1937, and receives a salary of \$3,000 from each corporation. Each \$3,000 received by A from each of the corporations X, Y, and Z (whether or not such corporations are related), constitutes wages, and is subject to the tax.

Remuneration paid for employment and not excluded by the \$3,000 limitation constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person for whom the services were performed and the individual who performed them.

Example 4: A is employed by B during the month of January, 1937, in an employment and for the services then performed for B, the employer, is entitled to receive remuneration of \$100. A leaves B's employ at the close of business on January 31, 1937. On February 15, 1937 (when A is no longer an employee of B), B pays A the remuneration of \$100 which was earned for the services performed in January. The \$100 is wages within the meaning of the Act, and the tax is payable with respect thereto.

The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages within the meaning of the Act if paid by an employer to his employee as compensation for employment.

The basis upon which the remuneration is paid and the time of payment, are immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework,

or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

The medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, such as goods, lodging, food, and clothing.

The amount of any tax which is required by section 802(a) to be deducted by the employer from the remuneration of an employee is considered to be a part of the employee's wages, and is deemed to have been paid to the employee as wages at the time that the deduction was made.

Ordinarily, facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.

(See articles 15, 16, 201, and 301.)

ART. 15. Exclusion from wages.—The following are excluded from the computation of "wages":

(a) All remuneration for services which are excepted by section 811(b) of the Act or section 11 of the Carriers Taxing Act, or which are performed outside of the United States. (See articles 5 to 13, inclusive.)

(b) All remuneration for services during a particular calendar year, after the first \$3,000 has been paid by the employer to the employee with respect to employment during that calendar year. (See article 14.)

(c) Tips or gratuities paid directly to an employee by a customer of an employer, and not in any way accounted for by the employee to the employer.

ART. 16. Items included as wages.—(a) *General.*—Wages paid with respect to employment during any calendar year include items paid in money and the fair value, at the time of payment, of all items other than money.

(b) *Dismissal pay.*—Payment to an employee of so-called dismissal pay, vacation allowances, or sick pay, constitutes wages.

(c) *Traveling and other expenses.*—Amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(d) *Premiums on life insurance.*—Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not wages, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(e) *Deductions by an employer from remuneration of an employee.*—Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Act, or any Act of Congress or the law of any State, requires or permits such deduction and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

(f) *Payments by employers into employees' funds.*—Payments made by an employer into a stock bonus, pension, or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract of employment *requires* such payments as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

CHAPTER II
EMPLOYEES' TAX

SECTION 801 OF THE ACT

In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

ART. 201. Measure of employees' tax.—The employees' tax is measured by the amount of wages actually or constructively received on and after January 1, 1937, with respect to employment on and after such date. (See article 2, relating to employment, and articles 14, 15, and 16, relating to wages.)

ART. 202. Rates and computation of employees' tax.—The rates of employees' tax applicable for the respective calendar years are as follows:

	<i>Per cent</i>
For the calendar years 1937, 1938, and 1939.....	1
For the calendar years 1940, 1941, and 1942.....	1½
For the calendar years 1943, 1944, and 1945.....	2
For the calendar years 1946, 1947, and 1948.....	2½
For the calendar year 1949 and subsequent calendar years.....	3

The employees' tax is computed by applying to the wages received by the employee the rate in effect at the time of the performance of the services for which the wages were received.

Example: During 1939 A is an employee of B and is engaged in an employment (see article 2). In the following year, 1940, B, the employer, pays A \$1,000 as remuneration for the services which were performed by A in the preceding year. The tax is payable at the 1 per cent rate in effect for the calendar year 1939 (the year of the

employment), and not at the 1½ per cent rate which is in effect for the calendar year 1940 (the year in which the wages were paid).

ART. 203. When employees' tax attaches.—The employees' tax attaches at the time that the wages are either actually or constructively received by the employee. Wages are constructively received when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute receipt in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their receipt brought within his own control and disposition. (See article 303, relating to the time the employers' tax attaches.)

SECTION 802(a) OF THE ACT

The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

SECTION 607 OF THE REVENUE ACT OF 1934

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

ART. 204. Collection of, and liability for, employees' tax.—The employer shall collect from each of his employees the employees' tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employees' tax from such wages as and when paid, either actually or constructively. The employer is required to collect the tax, notwithstanding the wages are paid in something other than money (for example, wages paid in stock, board, lodging; see article 16(a)), and to pay the tax to the collector in money. In collecting employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employees' tax on all wages paid by him to each of his employees whether or not it is collected from

the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee is also liable for the employees' tax with respect to all the wages received by him. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the collector. (As to wages see articles 14, 15, and 16.)

Section 1114 of the Revenue Act of 1926 (see page 38, these regulations) provides severe penalties for a willful failure to collect, or truthfully to account for and pay over, the employees' tax or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by any person, including the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

ART. 205. Manner and time of payment of employees' tax.—The employees' tax is payable to the collector in the manner and at the time prescribed in article 410.

ART. 206. Statements of tax deductions to be furnished to employees.—At the time each payment of wages is made to an employee his employer shall furnish a written statement to the employee showing the amount of employees' tax deducted from such wages. No form is prescribed for such statement. The employer may use any means suitable for the purpose which provides the employee at the time of payment with information in writing of the amount which constitutes the deduction on account of the tax imposed by section 801 of the Social Security Act, as distinguished from any other deductions.

CHAPTER III
EMPLOYERS' TAX

SECTION 804 OF THE ACT

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum.

(2) With respect to employment during the calendar years 1940, 1941, and 1942, the rate shall be 1½ per centum.

(3) With respect to employment during the calendar years 1943, 1944, and 1945, the rate shall be 2 per centum.

(4) With respect to employment during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(5) With respect to employment after December 31, 1948, the rate shall be 3 per centum.

ART. 301. Measure of employers' tax.—The employers' tax is measured by the amount of wages actually or constructively paid on and after January 1, 1937, with respect to employment on and after such date. (See article 2, relating to employment, and articles 14, 15, and 16, relating to wages.)

ART. 302. Rates and computation of employers' tax.—The rates of employers' tax applicable for the respective calendar years are as follows:

	<i>Per cent</i>
For the calendar years 1937, 1938, and 1939.....	1
For the calendar years 1940, 1941, and 1942.....	1½
For the calendar years 1943, 1944, and 1945.....	2
For the calendar years 1946, 1947, and 1948.....	2½
For the calendar year 1949 and subsequent calendar years.....	3

The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time of the performance of the services for which the wages were paid. (See the example in article 202.)

ART. 303. When employers' tax attaches.—The employers' tax attaches at the time that the wages are either actually or constructively paid by the employer. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually

reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (See article 203, relating to the time the employees' tax attaches.)

ART. 304. Liability for employers' tax.—The employer is liable for the employers' tax with respect to the wages paid to his employees for employment performed for him.

ART. 305. Manner and time of payment of employers' tax.—The employers' tax is payable to the collector in the manner and at the time prescribed in article 410.

CHAPTER IV

RETURNS, PAYMENT OF TAX, AND RECORDS

SECTION 807 OF THE ACT

(a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. * * *

(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.

(d) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 602 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 807(c) OF THE ACT

Every person liable for any tax * * * shall make monthly returns under oath * * * and pay the taxes * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. * * *

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 807(c) OF THE ACT

(a) Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

(c) The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

**SECTION 3165 OF THE UNITED STATES REVISED STATUTES, AS
AMENDED**

Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

**SECTION 1104 OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION
618 OF THE REVENUE ACT OF 1928, MADE APPLICABLE BY SECTION
807(c) OF THE ACT**

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

**SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED
BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619(d)
OF THE REVENUE ACT OF 1928**

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and form such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from

such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 401. Monthly tax returns.—Every employer (see article 4) shall make a monthly tax return, in quadruplicate, on Form SS-1 for each calendar month, beginning with January, 1937. See, however, article 404, relating to final returns.

ART. 402. Initial and quarterly information returns.—(a) *General requirements.*—Every employer is required periodically to make an information return (1) containing a summary of taxable wages paid to his employees and of the taxes with respect to such wages, and (2) reporting the taxable wages paid to each of his employees. The period to be covered by each such return is set forth in subdivisions (b) and (c) of this article. Form SS-2 is prescribed for reporting the summary information and Form SS-2a is prescribed for reporting the wages of individual employees. The employer shall prepare and attach to Form SS-2 a separate Form SS-2a for each of his employees who received taxable wages during the period covered by the return. Form SS-2 shall be filed in duplicate, but only one original copy of Form SS-2a shall be filed for each employee. Such forms together constitute an information return under this article. Taxable wages paid to an employee who has attained age 65 or died before attaining age 65 shall be reported on Forms SS-2 and SS-2a, as well as on Form SS-3. See article 403, relating to information returns on Form SS-3, article 404, relating to final returns, and article 406, requiring every employer to show his identification number and the account number of each of his employees on each return under this article.

(b) *Initial information return.*—Every employer shall make an information return on Forms SS-2 and SS-2a for the period January 1, 1937, to June 30, 1937, both dates inclusive.

(c) *Quarterly information returns.*—Every employer shall make an information return on Forms SS-2 and SS-2a for the period July 1, 1937, to September 30, 1937, both dates inclusive, and for each subsequent period of three calendar months ending December 31, March 31, June 30, and September 30.

ART. 403. Information returns for employees who attain age 65 or die.—Every employer shall make an information return on Form SS-3 with respect to each of his employees who attains age 65 or dies before attaining age 65. A separate return shall be made for each such employee. In addition to reporting the attainment of age 65 or death

of an employee, the return shall show (1) the taxable wages paid during the period covered by the return for services of the employee, and (2) all remuneration which has not been paid but which when paid will constitute wages subject to tax for services of the employee. If the exact amount of such remuneration is not known, the fair estimated amount thereof shall be shown. The return on Form SS-3 for an employee who attains age 65 shall be filed on or before the fifteenth day after the date of the sixty-fifth anniversary of his birth. The return on Form SS-3 for an employee who dies before attaining age 65 shall be filed on or before the fifteenth day after the date of death. If the employee attains age 65 or dies on or before June 30, 1937, the return shall cover the period from January 1, 1937, to the date on which the return is completed for filing, both dates inclusive. If the employee attains age 65 or dies on or after July 1, 1937, the return shall cover the period beginning with the first day of the quarter in which the attainment of age 65 or the death occurs and ending on the date on which the return is completed for filing, both dates inclusive. (See article 402(c) for the 3-month periods which constitute quarters within the meaning of provisions of these regulations relating to returns.) The employer shall attach to and file with each return on Form SS-3 for an employee attaining age 65 satisfactory evidence that the employee has attained such age. No return is required under this article for any employee whose sixty-fifth anniversary of birth occurs on or before January 2, 1937. See article 9, relating to employees who have attained age 65, and article 406, requiring every employer to show his identification number and the account number of the employee involved on each return under this article.

ART. 404. Final returns.—The last return on Form SS-1 and the last return on Forms SS-2 and SS-2a, for any person who ceases to be an employer, shall be marked "Final return" by the employer or the person filing the return. Such final returns shall be filed with the collector on or before the thirtieth day after the date on which the final payment of wages subject to tax is made for services performed for the employer. The period covered by each such return shall be plainly written on the return, indicating the date of the final payment of wages. There shall be executed as part of each final return a statement giving the address at which the records of the employer required by article 412 will be kept, and if the employer is deceased or his business terminated or being terminated, the name of the person keeping the records.

ART. 405. Special returns.—Notwithstanding any other provision of these regulations, the Commissioner, whenever in his judgment

necessary, is authorized to require any person to file any tax or information return at any time pursuant to section 1102(b) of the Revenue Act of 1926, made applicable by section 807(b) of the Act.

ART. 406. Use of numbers assigned to employers and employees under Title VIII.—Every employer shall enter on every return on Forms SS-2 and SS-2a and on every return on Form SS-3 the identification number assigned to him under Title VIII of the Act. If no identification number has been assigned to the employer prior to the time he files any such return, the employer shall enter on the return the date on which the application therefor on Form SS-4 was filed (or mailed) by him and the name and address of the agency to which the application was addressed. The account number assigned under Title VIII of the Act to every employee with respect to whom information is required to be reported on Form SS-2a or Form SS-3 shall be entered on such form by the employer. If no account number has been assigned to the employee prior to the time such form is filed, the employer shall enter on the form the date on which the application therefor on Form SS-5 was filed (or mailed) by the employer or employee, the name and address of the agency to which the application was addressed, and the address of the employee if living. All claims made under article 504 shall show the account numbers of employees and identification numbers of employers involved. Every employee shall state his account number in any communication to the office of the Commissioner or a collector relative to his tax liability under Title VIII of the Act. See the Treasury Decision relating to the assignment of account numbers to employees and identification numbers to employers under Title VIII of the Act.

ART. 407. Execution of returns.—Each return shall be signed and (except as provided in this article) verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; or (3) a responsible and duly authorized member having knowledge of its affairs, if the employer is a partnership or other unincorporated organization. Returns on Form SS-3 need not be verified. The oath or affirmation may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the

appointment and official character of the attesting officer. If the sum of the employees' tax and employers' tax shown to be payable by any monthly tax return on Form SS-1 is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. If the sum of the employees' tax and employers' tax reported on any information return on Form SS-2 is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

ART. 408. Use of prescribed forms.—Each return, together with any prescribed copies and supporting data, shall be filled out and disposed of in accordance with the instructions contained thereon and the regulations applicable thereto. Copies of the prescribed forms may be obtained from collectors. An employer will not be excused from making a return for the reason that no form has been furnished to him. Employers shall make application to the collector for the forms needed in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. The return shall be carefully prepared so as fully and clearly to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the Act. In case an employer does not have the form prescribed under article 401, a statement made by the employer disclosing the amount of wages paid during the calendar month with respect to employment performed after December 31, 1936, together with the amount of employers' tax and employees' tax with respect to such wages, may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the employer from liability to the penalty imposed for the delinquent filing of the monthly tax return by section 3176 of the United States Revised Statutes, as amended, and section 406 of the Revenue Act of 1935 (see article 604), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form. Each employer is required to file his own return with respect to wages for employment performed for him. Consolidated returns of parent and subsidiary corporations are not permitted.

ART. 409. Place and time for filing returns.—Each return shall be filed with the collector for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector at Baltimore, Md. Except as provided in articles 403 and 404, each return shall be filed on or before the last day of the first month following the period for which it is made. If the last day for filing any return falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be

posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the due date. As to additions to the tax in the case of failure to file a monthly tax return within the prescribed time, see article 604. See also section 1114 of the Revenue Act of 1926 (page 38, these regulations), relative to penalties.

ART. 410. Payment of tax.—The employees' tax and the employers' tax required to be reported on the return on Form SS-1 are due and payable to the collector, without assessment by the Commissioner or notice by the collector, at the time fixed for filing such return. For provisions relating to interest and penalties see articles 602, 603, and 604 and section 1114 of the Revenue Act of 1926 (page 38, these regulations).

ART. 411. When fractional part of cent may be disregarded.—In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See article 204 for provisions relative to fractional parts of a cent in connection with the deduction of employees' tax from wages.

ART. 412. Records.—(a) *Records of employers.*—Every employer liable for tax shall keep accurate records of all remuneration paid to his employees after December 31, 1936, for services performed for him after such date. Such records shall show with respect to each employee—

- (1) the name and address of the employee and the account number assigned to the employee under the Act,
- (2) the occupation of the employee,
- (3) the total amount (including any sum withheld therefrom as tax or for any other reason) and date of each remuneration payment and the period of services covered by such payment,
- (4) the amount of such remuneration payment which constitutes wages subject to tax (see sections 811(a) and 1101(c) of the Act and articles 14, 15, and 16), and
- (5) the amount of employees' tax withheld or collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

If the total remuneration payment (paragraph (3), above) and the amount thereof which is taxable (paragraph (4), above) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of every adjustment of employees' tax or employers' tax shall also be kept, including the date and amount of each adjustment. (See articles 501, 502, and 503, relating to adjustments.)

No particular form is prescribed for keeping the records required by this subdivision. Each employer shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which the employer is liable are correctly computed and paid.

(b) *Records of employees.*—While not mandatory, it is advisable for each employee, beginning January 1, 1937, to keep permanent accurate records showing the name of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, and the information with respect to himself which is required by subdivision (a) of this article to be kept by employers.

(c) *Copies of returns, schedules, and statements.*—Every employer who is required, by these regulations or by instructions on any form prescribed under these regulations, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(d) *Records of overpayments.*—Every person claiming refund or credit of any overpayment of tax, penalty, or interest shall keep a complete and detailed record of the overpayment.

(e) *Place and period for keeping records.*—All records required by these regulations shall be kept, by the person required to keep them, at some convenient and safe location accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. Records required by subdivisions (a) and (c) of this article shall be maintained for a period of at least four years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is the later. Records required by subdivision (d) of this article (including records required by subdivisions (a) and (c)) relating to a claim shall be maintained for a period of at least four years after the date the claim is filed.

CHAPTER V

ERRONEOUS COLLECTION OR PAYMENT OF TAX

SECTION 802(b) OF THE ACT

If more or less than the correct amount of tax imposed by section 801 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

SECTION 805 OF THE ACT

If more or less than the correct amount of tax imposed by section 804 is paid with respect to any wage payment, then, under regulations made under this title, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent wage payments to the same individual by the same employer.

ART. 501. Adjustments in general.—Sections 802(b) and 805 of the Act provide in certain cases for the adjustment of errors in the payment of employees' tax and employers' tax without the formality of a claim being filed for refund or credit of an overpayment or without formal demand being made by the collector for payment of any additional amount due by reason of an underpayment. Not all corrections of erroneous collections or payments of tax, however, constitute "adjustments" within the meaning of the Act and these regulations. The various situations under which such adjustments shall be made are set forth in articles 502 and 503. Such articles also contain provisions relating to settlement other than by adjustment under certain circumstances set forth therein. Articles 504 and 505 deal further with settlement other than by adjustment. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate adjustment must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another. Erroneous payments of employers' tax and of employees' tax must be adjusted separately. No interest shall be allowed or collected with respect to any erroneous collection or payment adjusted pursuant to article 502 or 503.

ART. 502. Adjustment of employees' tax.—(a) *Undercollections.*—(1) *Prior to filing of return.*—If no employees' tax or less than the cor-

rect amount of employees' tax is deducted from any payment of wages to an employee and the error is discovered prior to the time the return on Form SS-1 is filed with the collector for the month in which such wages are paid, the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. While, in such case, the employer may reimburse himself by deductions from subsequent remuneration of the employee, such deductions do not constitute adjustments within the meaning of this article, and shall not be reported as adjustments on any return on Form SS-1.

(2) *After return is filed.*—If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of wages to an employee, and the correct amount of such tax is not reported and paid pursuant to paragraph (1), the employer shall adjust the undercollection by deducting the amount thereof from the first remuneration payment for services made to such employee after the error is discovered. Amounts so deducted shall be reported as adjustments on the return on Form SS-1 for the month in which deducted. The undercollection shall be deducted from such first remuneration payment in addition to the employees' tax, if any, which attaches thereto. Such deduction shall be made even though such remuneration payment, for any reason, does not constitute wages (see articles 14, 15, and 16). If the individual whose employees' tax was undercollected leaves the employ of the employer who failed to make the deduction and is entitled to no further remuneration from such employer, the undercollection is not adjustable under this article. In such case if the undercollection has not been reported and paid pursuant to paragraph (1), the employer shall report and pay the tax with the next monthly return on Form SS-1 filed after discovery of the error. No undercollection of employees' tax shall be adjusted after receipt from the collector of formal notice and demand for payment thereof based upon assessment approved by the Commissioner, but the amount shall be paid pursuant to such notice and demand. While in such case the employer may reimburse himself by deductions from remuneration of the employee, such deductions do not constitute adjustments within the meaning of this article and shall not be reported as adjustments on any return on Form SS-1.

(b) *Overcollections.*—(1) *Prior to filing of return.*—If an employer (A) during any calendar month collects more than the correct amount of employees' tax from any employee, and (B) reimburses the employee in the amount of the overcollection prior to the time the return on Form SS-1 for such month is filed with the collector, and (C) obtains and keeps as part of his records the written

receipt of the employee, showing the date and amount of the reimbursement, the employer shall not report or pay to the collector the amount of the overcollection. Such reimbursement does not constitute an adjustment within the meaning of this article and shall not be reported as an adjustment on any return on Form SS-1. However, every overcollection not repaid to and receipted for by the employee as provided in this paragraph must be reported and paid to the collector with the return on Form SS-1 for the month in which the overcollection took place.

(2) *After return is filed.*—If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection when the first payment of wages is made to the employee after discovery of the error. If the first remuneration payment to the employee after discovery of the error does not for any reason constitute wages (see articles 14, 15, and 16), the adjustment shall be deferred until the first payment of wages is thereafter made to him. The adjustment shall be made by applying the overcollection against the employees' tax which attaches to such wages, and by deducting the remainder, if any, of the tax from such wages. In case the overcollection is greater in amount than the employees' tax attaching to such payment of wages, the balance of the overcollection shall be applied against the employees' tax attaching to consecutive payments of wages until the adjustment is completed. No adjustment shall be made under this paragraph after the expiration of four years after the overcollection was paid to the collector. A claim for credit or refund (in accordance with article 504) may be filed within such 4-year period for such part of any overcollection as can not be adjusted within such period. After the employee leaves the employ of the employer who made the overcollection and is entitled to no further wages from such employer, adjustments under this article are not permissible. In such case the employer may pay the amount of the overcollection, or such part thereof as remains unadjusted under this article, to the employee, and file a claim for credit or refund in accordance with article 504. In lieu of paying such amount prior to filing a claim, the employer may obtain the employee's written consent to allowance of the claim.

ART. 503. *Adjustment of employers' tax.*—(a) *Underpayments.*—If no employers' tax or less than the correct amount of employers' tax is paid with respect to any payment of wages, the employer shall adjust the error by (1) reporting the additional amount due by reason of the underpayment as additional tax on his next return on Form SS-1 filed after the discovery of the error and (2) paying the amount thereof to the collector at the time such return is filed. However,

no underpayment shall be adjusted under this article after receipt from the collector of formal notice and demand for payment thereof based upon an assessment approved by the Commissioner, but the amount thereof shall be paid to the collector pursuant to such notice and demand.

(b) *Overpayments.*—If an employer pays more than the correct amount of employers' tax, the employer shall adjust the error by applying the excess payment as a credit against the tax due upon his next return on Form SS-1 filed after the discovery of the error. No overpayment shall be adjusted under this article after the expiration of four years after the date the overpayment was made to the collector.

SECTION 806 OF THE ACT

If more * * * than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the overpayment * * * of tax cannot be adjusted under section 802(b) or 805 the amount of the overpayment shall be refunded * * * in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

SECTION 1120 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 807(c) OF THE ACT

In the case of any overpayment or overcollection of any tax imposed by Title * * * VI, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

SECTION 3220 OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1111 OF THE REVENUE ACT OF 1926 AND SECTION 619(b) OF THE REVENUE ACT OF 1928

Except as otherwise provided * * * the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; * * *.

SECTION 3228(a) OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1112 OF THE REVENUE ACT OF 1926 AND SECTION 619(c) OF THE REVENUE ACT OF 1928 AND SECTION 1106 OF THE REVENUE ACT OF 1932

All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrong-

fully collected must * * * be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

SECTION 3477 OF UNITED STATES REVISED STATUTES

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

ART. 504. Credit or refund of overpayments which are not adjustable.—

(a) If more than the correct amount of tax (including interest or penalty, if any) is paid to the collector and if the overpayment can not be adjusted pursuant to article 502 or 503, the amount of the overpayment may be refunded to the person who paid the tax to the collector.

(b) If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector, and (2) the employee leaves the employ of such employer, and (3) the employee does not receive reimbursement by way of adjustment or otherwise from such employer and does not authorize the employer to file a claim and receive refund or credit, the amount of the overpayment may be refunded to the employee.

(c) If any person files a monthly tax return showing a greater amount of tax than is actually due, and pays such tax, he may file a claim for refund as provided for in this article, or he may take credit for such overpayment upon any monthly tax return subsequently filed. The return upon which the credit is taken must have securely attached thereto a statement under oath, setting forth in detail the grounds and facts relied upon in support of the credit.

(d) Every claim for refund under this article shall be made on the prescribed form in accordance with the instructions printed on

such form and in accordance with these regulations. Copies of the prescribed form may be obtained from any collector. All grounds in detail and all facts alleged in support of the claim must be clearly set forth under oath. See article 406, requiring the account number of every employee and the identification number of every employer involved to be shown on all claims made under this article.

(e) In the case of any claim filed by an employer for refund or credit of employees' tax, the employer shall include in the claim a statement that he has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund or credit. In every such case the employer shall maintain as part of his records the written receipt of the employee acknowledging payment or the written consent of the employee, whichever is used in support of the claim.

(f) No refund or credit will be allowed after the expiration of four years after the payment to the collector of the tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 4-year period.

(g) A claim which does not comply with the requirements of this article will not be considered for any purpose as a claim for refund or credit.

(h) If a return is filed by an individual who thereafter dies and a refund claim is filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

SECTION 806 OF THE ACT

If * * * less than the correct amount of tax imposed by section 801 or 804 is paid or deducted with respect to any wage payment and the * * * underpayment of tax cannot be adjusted under section

802(b) or 805 * * * the amount of the underpayment shall be collected, in such manner and at such times (subject to the statutes of limitations properly applicable thereto) as may be prescribed by regulations made under this title.

ART. 505. Assessment of underpayments.—If any tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is otherwise adjustable) or afford the employer opportunity to adjust the underpayment pursuant to article 502 or 503. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees' tax not collected by the employer may also be assessed against the employee. The unpaid amount, together with interest and penalty, if any, will be collected, pursuant to section 3184 of the United States Revised Statutes and other applicable provisions of law, from the person against whom the assessment is made. If any amount of an assessment has been previously reported and paid to the collector as an adjustment or otherwise, the person against whom the assessment is made is privileged to file with the collector a claim for abatement of such amount, together with interest and penalty thereon if included in the assessment. If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to article 502, reimbursement is a matter to be settled between the employer and the employee. See article 602, relating to interest, and article 603, relating to penalty for failure to pay an assessment after notice and demand. See also article 601, relative to jeopardy assessments.

CHAPTER VI

MISCELLANEOUS PROVISIONS

JEOPARDY ASSESSMENT

SECTION 1105 OF THE REVENUE ACT OF 1932, AS AMENDED BY SECTION 510 OF THE REVENUE ACT OF 1934

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3187 of the Revised Statutes, as amended.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

ART. 601. Jeopardy assessment.—Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting an immediate return and collection of the tax, the case should be promptly reported to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the

amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3187 of the United States Revised Statutes, as amended.

INTEREST AND PENALTIES

SECTION 807(a) OF THE ACT

* * * If the tax is not paid when due, there shall be added as part of the tax interest (except in the case of adjustments made in accordance with the provisions of sections 802(b) and 805) at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

SECTION 3184 OF UNITED STATES REVISED STATUTES

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

SECTION 404 OF THE REVENUE ACT OF 1935

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

ART. 602. Interest.—If the tax is not paid to the collector when due and is not adjusted under article 502 or 503, interest accrues at the rate of 6 per cent per annum.

ART. 603. Penalty for failure to pay an assessment after notice and demand.—(a) In case the taxpayer fails to pay to the collector the entire amount of any assessment of tax, penalty, or interest within a period of 10 days after the date of issuance of the form for first

notice and demand, based on such assessment, there accrues under section 3184 of the United States Revised Statutes (except as provided in subdivision (b) of this article) a penalty of 5 per cent of the amount of such assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of the first notice and demand, a claim for abatement of any amount of the assessment is filed with the collector who issued the form, the 5 per cent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 per cent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

**SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED
BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619(d)
OF THE REVENUE ACT OF 1928**

* * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to wilful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SECTION 406 OF THE REVENUE ACT OF 1935

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

ART. 604. Penalties for delinquent or false returns.—(a) *Delinquent returns.*—Unless the person required to file a return on Form SS-1 establishes to the satisfaction of the Commissioner that a reasonable

cause exists for the delinquency, the failure to file such return on or before the due date causes to accrue a penalty equal to the following percentage of the taxes required to be reported thereon:

(1) 5 per cent, if the return is filed on or before the thirtieth day after the due date;

(2) 10 per cent, if the return is filed after such thirtieth day and on or before the sixtieth day after the due date;

(3) 15 per cent, if the return is filed after such sixtieth day and on or before the ninetieth day after the due date;

(4) 20 per cent, if the return is filed after such ninetieth day and on or before the one hundred and twentieth day after the due date; or

(5) 25 per cent, if the return is filed after such one hundred and twentieth day or if the return is never filed by the person required to file it.

In computing the period of delinquency all Sundays and holidays after the due date are counted.

Every person filing a return after the due date shall securely attach to the return his statement under oath setting out in detail the reason for his delinquency. The collector shall forward the statement to the Commissioner with the return. The Commissioner will determine whether a penalty has been incurred and, if so, make the assessment.

(b) *False returns.*—If a false or fraudulent return is willfully made, the penalty under section 3176 of the United States Revised Statutes, as amended, is 50 per cent of the total taxes due for the entire period involved including any tax previously paid.

ADDITIONAL PENALTIES

SECTION 1114 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 867(c) OF THE ACT

(a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties

provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

**SECTION 35 OF THE CRIMINAL CODE OF THE UNITED STATES, AS
AMENDED**

Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States; or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to

be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. * * *

RETROACTIVITY OF REGULATIONS

SECTION 1108(a) OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION 605 OF THE REVENUE ACT OF 1928 AND SECTION 506 OF THE REVENUE ACT OF 1934

The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

AUTHORITY FOR REGULATIONS

SECTION 808 OF THE ACT

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title.

In pursuance of section 808 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.

CHAS. T. RUSSELL,
Acting Commissioner of Internal Revenue.

Approved November 9, 1936.

WAYNE C. TAYLOR,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 9, 1936, 4:12 p. m.)

APPENDIX

TREASURY DECISION 4704

IDENTIFICATION OF TAXPAYERS UNDER TITLE VIII OF THE SOCIAL SECURITY ACT.—ASSIGNMENT OF IDENTIFICATION NUMBERS TO EMPLOYERS AND ACCOUNT NUMBERS TO EMPLOYEES.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH A. Section 801 of the Social Security Act provides, in part:

"In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 811) received by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

"(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum."

* * * * *

PAR. B. Section 802(a) of the Social Security Act provides:

"The tax imposed by section 801 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. Every employer required so to deduct the tax is hereby made liable for the payment of such tax, and is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer."

PAR. C. Section 804 of the Social Security Act provides, in part:

"In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 811) paid by him after December 31, 1936, with respect to employment (as defined in section 811) after such date:

"(1) With respect to employment during the calendar years 1937, 1938, and 1939, the rate shall be 1 per centum."

* * * * *

PAR. D. Section 811 of the Social Security Act provides:

"When used in this title—

"(a) The term 'wages' means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include that part of the remuneration which, after remuneration equal to \$3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year.

"(b) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

- “(1) Agricultural labor;
- “(2) Domestic service in a private home;
- “(3) Casual labor not in the course of the employer's trade or business;
- “(4) Service performed by an individual who has attained the age of sixty-five;
- “(5) Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
- “(6) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- “(7) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
- “(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

Section 11 of the Carriers Taxing Act, approved August 29, 1935 (49 Stat. 974), provides:

“The term ‘employment’, as defined in subsection (b) of section 811 of Title VIII of the Social Security Act, shall not include service performed in the employ of a carrier as defined in subdivision (a) of section 1 of this Act.”

PAR. E. Section 1101(a) of the Social Security Act provides, in part:

“When used in this Act—

“(1) The term ‘State’ * * * includes Alaska, Hawaii, and the District of Columbia.

“(2) The term ‘United States’ when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

“(3) The term ‘person’ means an individual, a trust or estate, a partnership, or a corporation.

“(4) The term ‘corporation’ includes associations, joint-stock companies, and insurance companies.

* * * * *

“(6) The term ‘employee’ includes an officer of a corporation.”

PAR. F. Section 807 of the Social Security Act provides, in part:

“(a) The taxes imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. * * *

“(b) Such taxes shall be collected and paid in such manner, at such times, and under such conditions, not inconsistent with this title (either by making and filing returns, or by stamps, coupons, tickets, books, or other reasonable devices or methods necessary or helpful in securing a complete and proper collection and payment of the tax or in securing proper identification of the taxpayer), as may be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

“(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, shall, insofar as applicable and not inconsistent with the provisions of this title, be applicable with respect to the taxes imposed by this title.”

* * * * *

PAR. G. Section 1102(a) of the Revenue Act of 1926 provides:

"Every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe."

PAR. H. Section 1114(a) of the Revenue Act of 1926 provides:

"Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution."

PAR. I. Section 808 of the Social Security Act provides:

"The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title."

Pursuant to the above-quoted provisions of law and other provisions of law, the following regulations are hereby prescribed:

ARTICLE 1. *Definitions.*—As used in these regulations—

(a) The terms defined in paragraphs D and E, above, shall have the respective meanings therein assigned to them.

(b) *Act* means the Social Security Act (Public, No. 271, Seventy-fourth Congress; 49 Stat. 620).

(c) *Employer* means a person employing one or more employees.

(d) *Employee* means an employee performing services in employment. (See paragraphs D and E, above.)

(e) *Social Security Board* means the Board established pursuant to Title VII of the Act.

ART. 2. *Taxes under Title VIII of the Act.*—Section 801 of the Act imposes an income tax on every employee, referred to herein as the employees' tax. Section 802(a) of the Act requires the employer to collect the employees' tax by deducting the amount thereof from the wages of the employee when paid. Section 804 of the Act imposes an excise tax on every employer, referred to herein as the employers' tax. The employees' tax and the employers' tax become effective January 1, 1937, and are administered by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury. These taxes will be collected by means of monthly tax returns to be filed by employers.

Information returns will also be required of every employer, reporting the taxable wages which are paid to each of his employees. Employees are not required to make returns under Title VIII of the Act. Regulations 91, relating to the employees' tax and the employers' tax, set out the requirements with respect to tax returns, information returns, records, and payment of taxes under Title VIII, and contain provisions explaining in detail the application of such title. However, the regulations contained in this Treasury Decision set forth additional duties of employers and employees under Title VIII with respect to obtaining the assignment of numbers to be used by them for identification purposes in connection with the employees' tax and the employers' tax.

ART. 3. *Assignment of identification numbers and account numbers in general.*—An identifying number will be assigned to each employer and to each employee

under Title VIII of the Social Security Act. The procedure for obtaining an assignment of such number is set forth in these regulations. The number to be assigned to an employer is hereby designated as an "identification number." The number to be assigned to an employee is hereby designated as an "account number." The identification number assigned to the employer and also the account number assigned to each of his employees shall be shown by the employer in his records, returns, and claims to the extent required by articles 406 and 412 of Regulations 91. The Postmaster General and the Social Security Board (and such of their officers and employees as they may designate) will receive applications for identification numbers and applications for account numbers and will assign such numbers.

ART. 4. Assignment of identification numbers to employers.—(a) *Persons who are employers on November 16, 1936.*—Every person who is an employer on November 16, 1936, shall file an employer's application for identification number on Form SS-4. The application shall be filed, in accordance with instructions on the form, with the postmaster from whose post office the business mail of the employer's establishment is delivered. If the employer has more than one establishment on November 16, 1936, the employer shall file a separate application for each establishment. The employer shall file each application under this paragraph on or before November 21, 1936. The term "establishment" as used in this article means each separate place of employment. For example: If X Company has two retail stores and a manufacturing plant in New York City, and a general office in Chicago, it has four establishments, that is, each of the two retail stores, the manufacturing plant, and the general office is a separate establishment.

(b) *Persons who become employers after November 16, 1936.*—Every person not an employer on November 16, 1936, who becomes an employer after such date, shall file an employer's application for identification number on Form SS-4. Each application under this paragraph shall be filed with the Social Security Board at Washington, D. C., or at any field office of the Board located in the area in which the headquarters of the employer is situated. The employer shall insert on line 3 of the application the date on which he became an employer, and shall file the application on or before the thirtieth day after such date.

(c) *General provisions relating to applications for identification numbers.*—Copies of the prescribed form, Form SS-4, may be obtained prior to January 1, 1937, at any post office. Between January 1, 1937, and March 31, 1937, both dates inclusive, copies of such form may be obtained at the Social Security Board, Washington, D. C., or at any field office of the Social Security Board, or at any post office. After March 31, 1937, copies of the form will be available at the Social Security Board, Washington, D. C., or at field offices of the Social Security Board. To the extent practicable in connection with applications to be filed on or before November 21, 1936, postmasters will deliver copies of the form to employers. However, an employer will not be excused from making an application because no application form has been furnished to him. Employers should request copies of the form in ample time to have their applications prepared and filed on or before the due date. Each employer shall carefully prepare his application so as to set forth fully and clearly the data therein called for. Each application shall be signed by the employer. If, however, the employer is not an individual, the application shall be signed by a member or responsible official of the employer having knowledge of the employer's affairs. Identification numbers will be assigned to employers in due course upon the basis of information reported on applications required under this article.

ART. 5. Assignment of account numbers to employees.—(a) *Individuals who are employees on November 24, 1936.*—Every individual who is an employee on November 24, 1936, shall file an application for an account number on Form SS-5. The application shall be filed, in accordance with instructions on the form, with any postmaster. The employee shall file the application on or before December 5, 1936.

(b) *Individuals who become employees after November 24, 1936.*—Every individual not an employee on November 24, 1936, who becomes an employee after such date, shall file an application for an account number on Form SS-5. The employee shall insert in the blank space at the end of line 13 of the application the date on which he became an employee, and shall file the application on or before the thirtieth day after such date. Each application under this paragraph shall be filed as follows—

(1) If filed before January 1, 1937, the application shall be filed with any postmaster.

(2) If filed during the period January 1, 1937, to March 31, 1937, both dates inclusive, the application shall be filed with any postmaster, or at any field office of the Social Security Board located in the area in which the employee works.

(3) If filed after March 31, 1937, the application shall be filed with the Social Security Board at Washington, D. C., or at any field office of the Social Security Board located in the area in which the employee works.

(c) *Circumstances under which employers are required to fill out and file applications for employees.*—If an individual who is an employee on the last day of the period covered by any information return (see articles 402 to 405, inclusive, of Regulations 91) has failed to file an application for an account number on Form SS-5, the employer shall file an application for the employee on or before the tenth day after such last day. If an employee has failed to file an application on Form SS-5 prior to the date he attains age 65, or the date he dies before attaining age 65, or the date he leaves the service of the employer, the employer shall file an application for the individual on or before the tenth day after such date. However, the employer shall not file an application for any employee who is not in his employ after December 31, 1936. An employee is not relieved from his duty to file an application on Form SS-5, by reason of his employer having filed an application for him. Every application filed by an employer under this paragraph shall be filed on Form SS-5. Each such application shall be filled out on the information and belief of the employer, setting out as fully and clearly as practicable the data therein called for. The employer shall insert on the form the reason why he filed the application, such as: "Employee still in my employ but failed to file application on or before _____, the last day covered by information return"; or "Employee died on _____, before attaining age 65, without filing application"; or "Employee attained age 65 on _____ without filing application"; or "Employee left my service on _____ without filing application". The employer shall sign each such application on the line provided on the form for the employee's signature, inserting after the signature the word "Employer". Each application under this paragraph shall be filed as follows—

(1) If filed before April 1, 1937, the application shall be filed with any postmaster, or at any field office of the Social Security Board located in the area in which the employee works.

(2) If filed after March 31, 1937, the application shall be filed with the Social Security Board at Washington, D. C., or at any field office of the Social Security Board located in the area in which the employee works.

(d) *General provisions relating to applications for employee account numbers.*—Copies of the prescribed form, Form SS-5, may be obtained prior to January 1, 1937, at any post office. Between January 1, 1937, and March 31, 1937, both dates inclusive, copies of such form may be obtained at the Social Security Board, Washington, D. C., or at any field office of the Social Security Board, or at any post office. After March 31, 1937, copies of the form will be available at the Social Security Board, Washington, D. C., or at field offices of the Social Security Board. To the extent practicable in connection with applications to be filed on or before December 5, 1936, the forms will be delivered to employers for distribution to employees. However, no employee or employer will be excused from making an application because an application form has not been furnished to him. Employees and employers should request copies of the form in ample time to have the applications prepared and filed on or before the due date. Each application shall be carefully prepared so as to set forth fully and clearly the data therein called for. Account numbers will be assigned to employees in due course upon the basis of information reported on applications required under this article.

ART. 6. *Employees required to advise employers of account numbers.*—Every employee shall advise every employer for whom he performs services what his account number is. Care must be exercised that the employer is advised of the correct number. Such advice shall be furnished to the employer as soon as the employée is notified of the assignment of an account number and thereafter as soon as the employee enters the employ of any employer. Any employee may have his account number changed at any time by applying to the Social Security Board and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. The number so assigned shall be used by him even though he enters the employ of other employers.

CHAS. T. RUSSELL,
Acting Commissioner of Internal Revenue.

Approved November 5, 1936.

WAYNE C. TAYLOR,

Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 6, 1936, 12: 51 p. m.)

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