FEDERAL REGISTER

VOLUME 5 NUMBER 182

Washington, Wednesday, September 18, 1940

The President

REGISTRATION DAY

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

WHEREAS the Congress has enacted and I have this day approved the Selective Training and Service Act of 1940, which declares that it is imperative to increase and train the personnel of the armed forces of the United States and that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service; and

WHEREAS the said Act contains, in part, the following provisions:

"SEC. 2. Except as otherwise provided in this Act, it shall be the duty of every male citizen of the United States, and of every male alien residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of twenty-one and thirty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner and in such age group or groups, as shall be determined by rules and regulations prescribed hereunder.

* * * * *

"SEC. 5. (a) Commissioned officers, warrant officers, pay clerks, and enlisted men of the Regular Army, the Navy, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey, the Public Health Service, the federally recognized active National Guard, the Officers' Reserve Corps, the Regular Army Reserve, the Enlisted Reserve Corps, the Naval Reserve, and the Marine Corps Reserve; cadets, United States Military Academy; midshipmen, United States Naval Academy; cadets, United States Coast Guard Academy; men who have been accepted for admittance (commencing with the academic year next succeeding such acceptance) to the United States Military Academy as cadets, to the United States Naval Academy as midshipmen, or to the United States Coast Guard Academy as cadets, but only during the continuance of such acceptance; cadets of the advanced course, senior division, Reserve Officers' Training Corps or Naval Reserve Officers' Training Corps; and diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, residing in the United States, who are not citizens of the United States, and who have not declared their intention to become citizens of the United States, shall not be required to be registered under section 2 and shall be relieved from liability for training and service under section 3 (b)."

* * * * *

"SEC. 10 (a) The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;"

* * * * *

"(4) to utilize the services of any or all departments and any and all officers or agents of the United States and to accept the services of all officers and agents of the several States, Territories, and the District of Columbia and subdivisions thereof in the execution of this Act;"

* * * * *

"SEC. 14 (a) Every person shall be deemed to have notice of the requirements of this Act upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 2."

* * * * *

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by the aforesaid Selective Training and Service Act of 1940, do proclaim the following:

1. The first registration under the Selective Training and Service Act of 1940 shall take place on Wednesday, the sixteenth day of October, 1940, between the hours of 7 A. M. and 9 P. M.

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following legal holidays by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500), under regulations prescribed by the Administrative Committee, approved by the President.

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2. Every male person (other than persons excepted by Section 5 (a) of the aforesaid Act) who is a citizen of the United States or an alien residing in the United States and who, on the registration date fixed herein, has attained the twenty-first anniversary of the day of his birth and has not attained the thirty-sixth anniversary of the day of his birth, is required to present himself for and submit to registration. Every such person who is within the continental United States on the registration date fixed herein shall on that date present himself for and submit to registration at the duly designated place of registration within the precinct, district, or registration area in which he has his permanent home or in which he may happen to be on that date. Every such person who is not within the continental United States on the registration date fixed herein shall within five days after his return to the continental United States present himself for and submit to registration. Regulations will be prescribed hereafter providing for special registration of those who on account of sickness or other causes beyond their control are unable to present themselves for registration at the designated places of registration on the registration date fixed herein.

3. Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

4. The times and places for registration in Alaska, Hawaii, and Puerto Rico will be fixed in subsequent proclamations.

5. I call upon the Governors of the several States and the Board of Commissioners of the District of Columbia to provide suitable and sufficient places of registration within their respective jurisdictions and to provide suitable and necessary registration boards to effect such registration.

6. I further call upon all officers and agents of the United States and all officers and agents of the several States and the District of Columbia and subdivisions thereof to do and perform all acts and services necessary to accomplish effective and complete registration; and I especially call upon all local election officials and other patriotic citizens to offer their services as members of the boards of registration.

7. In order that there may be full cooperation in carrying into effect the purposes of said Act, I urge all employers, and government agencies of all kinds—Federal, State and Local—to give those under their charge sufficient time off in which to fulfill the obligation of registration incumbent on them under the said Act.

America stands at the crossroads of its destiny. Time and distance have been shortened. A few weeks have seen great nations fall. We cannot remain indifferent to the philosophy of force now rampant in the world. The terrible fate of nations whose weakness invited attack is too well known to us all.

We must and will marshal our great potential strength to fend off war from our shores. We must and will prevent our land from becoming a victim of aggression.

Our decision has been made.

It is in that spirit that the people of our country are assuming the burdens that now become necessary. Offers of service have flooded in from patriotic citizens in every part of the nation, who ask only what they can do to help. Now there is both the opportunity and the need for many thousands to assist in listing the names and addresses of the millions who will enroll on registration day at school houses, polling places, and town halls.

The Congress has debated without partisanship and has now enacted a law establishing a selective method of augmenting our armed forces. The method is fair, it is sure, it is democratic—it is the will of our people.

After thoughtful deliberation, and as the first step, our young men will come from the factories and the fields, the cities and the towns, to enroll their names on registration day.

On that eventful day my generation will salute their generation. May we all renew within our hearts that conception of liberty and that way of life which we have all inherited. May we all strengthen our resolve to hold high the torch of freedom in this darkening world so that our children and their children may not be robbed of their rightful inheritance.

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this sixteenth day of September in the year of our Lord nineteen hundred and [SEAL] forty, and of the Independence of the United States of America the one hundred and sixty-fifth.

FRANKLIN D ROOSEVELT

By the President:

CORDELL HULL,
Secretary of State.

[No. 2425]

[F. R. Doc. 40-3898; Filed, September 17, 1940; 10:16 a. m.]

EXECUTIVE ORDER

REVOKING IN PART EXECUTIVE ORDER NO. 8344 OF FEBRUARY 10, 1940, AND RESERVING PUBLIC LAND FOR USE AS AN AIR NAVIGATION SITE

ALASKA

By virtue of the authority vested in me by the act of June 25, 1910, c. 421, 36 Stat. 847, as amended by the act of August 24, 1912, c. 369, 37 Stat. 497, it is ordered as follows:

SEC. 1. Executive Order No. 8344[1] of February 10, 1940, temporarily withdrawing public lands on Kodiak Island and certain other islands, Alaska, for classification and in aid of legislation, is hereby revoked so far as it affects the tract of public land on Woody Island lying within the following-described boundaries:

Beginning at corner No. 1, from which the point for Cor. No. 1, M. C., United States Survey No. 1675, in approximate latitude 57°46'40" N., and longitude 152°19' W., bears S. 45°45' E., 209.5 feet, thence by metes and bounds.

S. 60°15' W., 860 feet to corner No. 2;
N. 29°45' W., 860 feet to corner No. 3;
N. 60°15' E., 860 feet to corner No. 4;
S. 29°45' E., 860 feet to corner No. 1, the place of beginning, containing 16.98 acres.

[1] 5 F.R. 654.

SEC. 2. Subject to the conditions expressed in the above-mentioned acts, and to all valid existing rights, the land described in section 1 of this order is hereby withdrawn from settlement, location, sale, or entry, and reserved for use by the Department of Commerce as an air-navigation site.

SEC. 3. The reservation made by section 2 of this order shall remain in force until revoked by the President or by act of Congress.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
September 14, 1940.

[No. 8540]

[F. R. Doc. 40-3891; Filed, September 16, 1940; 4:12 p. m.]

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER VII—AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Cotton, 1941-42]

PART 722—COTTON

A PROCLAMATION BY THE SECRETARY OF AGRICULTURE RELATING TO COTTON MARKETING QUOTAS, 1941-42 MARKETING YEAR

Whereas the Agricultural Adjustment Act of 1938, as amended, provides:

SEC. 342. Not later than November 15 of each year the Secretary [of Agriculture] shall find and proclaim (a) the total supply, the normal supply, and the carry-over of cotton as of August 1 of such year, (b) the probable domestic consumption of American cotton during the marketing year commencing August 1 of such year, (c) the probable exports of American cotton during such marketing year, and (d) the estimated carry-over of cotton as of the next succeeding August 1. * * *

SEC. 345. Whenever the Secretary determines that the total supply of cotton for any marketing year exceeds by more than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such fact not later than November 15 of such marketing year * * *, and marketing quotas shall be in effect during the next succeeding marketing year with respect to the marketing of cotton. Cotton produced in the calendar year in which such marketing year begins shall be subject to the quotas in effect for such marketing year notwithstanding that it may be marketed prior to August 1.

SEC. 343. (a) Not later than November 15 of each year the Secretary shall find and proclaim the amount of the national allotment of cotton for the succeeding calendar year in terms of standard bales of five hundred pounds gross weight. The national allotment shall be the number of bales of cotton adequate, together with the estimated carry-over as of August 1 of such succeeding calendar year, to make available a supply of cotton, for the marketing year beginning on such August 1, equal to the normal supply. * * *

(b) * * *. The national allotment for any year (after 1939) shall not be less than ten million bales.

(c) Notwithstanding the foregoing provisions of this section, the national allotment for any year shall be increased by a number of bales equal to the production of the acres allotted under section 344 (e) for such year.

SEC. 344. (a) The national allotment for cotton for each year (excluding that portion of the national allotment provided for in section 343 (c)) shall be apportioned by the Secretary among the several States on the basis of the average, for the five years preceding the year in which the national allotment is determined, of the normal production of cotton in each State. The normal production of a State for a year shall be (1) the quantity produced therein plus (2) the normal yield of the acres diverted in each county in the State under the previous agricultural adjustment or conservation programs. The normal yield of the acres diverted in any county in any year shall be the average yield per acre of the planted acres in such county in such year times the number of acres diverted in such county in such year.

(b) The Secretary shall ascertain, on the basis of the average yield per acre in each State, a number of acres in such State which will produce a number of bales equal to the allotment made to the State under subsection (a). Such number of acres plus the number of acres allotted to the State pursuant to subsection (e) (2) is referred to as the "State acreage allotment." The average yield per acre for any State shall be determined on the basis of the average of the normal production for the State for the years used in computing the allotment to the State, and the average, for the same period, of the acres planted and the acres diverted in the State.

(c) (1) The State acreage allotment (less the amount required for apportionment under paragraph (2)) shall be apportioned annually by the Secretary to the counties in the State. The apportionment to the counties shall be made on the basis of the acreage planted to cotton during the five calendar years immediately preceding the calendar year in which the State allotment is apportioned (plus, in applicable years, the acreage diverted under previous agricultural adjustment and conservation programs), with adjustments for abnormal weather conditions and trends in acreage during such five-year period.

(2) Not more than 2 per centum of the State acreage allotment shall be apportioned to farms in such State which were not used for cotton production during any of the three calendar years immediately preceding the year for which the allotment is made, on the basis of land, labor, and equipment available for the production of cotton; crop rotation practices; and the soil and other physical facilities affecting the production of cotton.

* * * * *

(e) (1) For 1938, 1939, and any subsequent year, the Secretary shall allot to the several counties, to which an apportionment is made under subsection (c), a number of acres required to provide a total acreage for allotment under this section to such counties of not less than 60 per centum of the sum of (1) the acreage planted to cotton in such counties in 1937, plus (2) the acreage therein diverted from cotton production in 1937 under the agricultural adjustment and conservation program. The acreage so diverted shall be estimated in case data are not available at the time of making such allotment.

(2) The Secretary shall allot to each State to which an allotment is made under subsection (b), and in which at least three thousand five hundred bales were produced in any of the five years immediately preceding the year for which the allotment is made, a number of acres sufficient to provide a total State acreage allotment for such State of not less than five thousand acres;

Whereas said Act contains, in section 301 (b), the following definitions of terms here pertinent:

"Carry-over" of cotton for any marketing year shall be the quantity of cotton on hand either within or without the United States at the beginning of such marketing year, which was produced in the United States prior to the beginning of the calendar year then current.

"Marketing year" means, in the case of the following commodities, the period beginning on the first and ending with the second date specified below:

* * * * *

Cotton, August 1—July 31 * * *.

"Normal supply" in the case of * * * cotton * * * shall be a normal year's domestic consumption and exports of the commodity, plus * * * 40 per centum in the case of cotton * * * of a normal year's domestic consumption and exports, as an allowance for a normal carry-over.

"Normal year's domestic consumption", in the case of cotton * * *, shall be the yearly average quantity of the commodity produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

"Total supply" of * * * cotton * * * for any marketing year shall be the carry-over of the commodity for such marketing year plus the estimated production of the commodity in the United States during the calendar year in which such marketing year begins.;

Whereas said Act provides, in section 301 (c), that "The latest available statistics of the Federal Government shall be used by the Secretary [of Agriculture] in making the determinations required to be made by the Secretary under this Act"; and

Whereas said Act provides, in section 350, that the provisions of Part IV (Marketing Quotas—Cotton) of subtitle B of Title III thereof "shall not apply to cotton the staple of which is 1⅛ inches or more in length";

§ 722.301 *Findings and determinations.* Now, therefore, be it known that I, Paul H. Appleby, Acting Secretary of Agriculture of the United States of America, acting under and pursuant to, and by virtue of, the authority vested in me by the Act of Congress known as the Agricultural Adjustment Act of 1938, as amended, upon the basis of the latest available statistics of the Federal Government, do hereby find, determine, and proclaim under sections 342, 343, and 345 of said Act (52 Stat. 56, 58, 203; 7 U.S.C., Sup., 1342, 1343, 1345):

(a) That the "total supply" of American cotton as of August 1, 1940, was 24,900,000 running bales;

(b) That the "normal supply" of American cotton as of August 1, 1940, was 18,200,000 running bales;

(c) That the "carry-over" of American cotton as of August 1, 1940, was 12,517,000 running bales;

(d) That the "probable domestic consumption of American cotton" during the marketing year commencing August 1, 1940, is 8,000,000 running bales;

(e) That the "probable exports of American cotton" during the marketing year beginning August 1, 1940, is 2,500,000 running bales;

(f) That the estimated "carry-over" of American cotton as of August 1, 1941, is 13,417,000 running bales;

(g) That the "total supply" of American cotton for the marketing year beginning August 1, 1940, exceeds by more

than 7 per centum the "normal supply" of cotton for such marketing year; and

(h) That the national allotment of cotton for the calendar year beginning on January 1, 1941, shall be 10,000,000 standard bales of five hundred pounds gross weight, increased by that number of standard bales of five hundred pounds gross weight equal to the production in the calendar year 1941 of that number of acres required to be allotted for 1941 under the terms of section 344 (e) of said Act.

Done at Washington, D. C., this 17th day of September, 1940. Witness my hand and the seal of the Department of Agriculture.

[SEAL] PAUL H. APPLEBY,
Acting Secretary.

[F. R. Doc. 40-3905; Filed, September 17, 1940; 11:42 a. m.]

TITLE 10—ARMY: WAR DEPARTMENT

CHAPTER VII—PERSONNEL

PART 74—ENLISTMENT OF FLYING CADETS[1]

§ 74.7 *Appointment as Reserve officer to be accepted promptly.* The commandant or commanding officer of the school or school detachment concerned will caution flying cadets, upon successful completion of their instruction, that their acceptance of appointment as Reserve officers should be made promptly, for the reason that undue delay may result in cancelation of the appointment. (41 Stat. 109, sec. 1, 44 Stat. 780; 10 U.S.C. 297) [Par. 20, AR 615-160, July 20, 1938, as amended by Cir. 100, W.D., Sept. 11, 1940]

[SEAL] E. S. ADAMS,
Major General,
The Adjutant General.

[F. R. Doc. 40-3895; Filed, September 17, 1940; 9:44 a. m.]

TITLE 26—INTERNAL REVENUE

CHAPTER I—BUREAU OF INTERNAL REVENUE

[T. D. 5006]

SUBCHAPTER C—MISCELLANEOUS EXCISE TAXES

PART 185—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

SEPTEMBER 13, 1940.

Section 213 of the Act of June 25, 1940 (Public, No. 656, 76th Congress), is as follows:

(a) Section 2800 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsections:

(g) *Defense tax for five years.* In lieu of the rates of tax specified in such of the sections of this title as are set forth in the following table, the rates applicable with respect to the period after June 30, 1940, and before July 1, 1945, shall be the rates set forth under the heading "Defense-Tax Rate":

Section	Description of Tax	Old rate	Defense-tax rate
2800 (a) (1)	Distilled spirits generally	$2.25	$3.00
2800 (a) (1)	Brandy	$2.00	2.75
*	*	*	*

* * * * *

Pursuant to the foregoing provision of law, sections 2802 (a), 2872, 2873, 2883, 2904, 3031 (a), as amended, 3037, and 3176 of the Internal Revenue Code, and sections 5 (e) and 6 of the Federal Alcohol Administration Act, as amended (27 U.S.C. Sup., 205, 206), § 185.54 of Regulations 10[1] is hereby revoked, and §§ 185.27, 185.84, 185.90 (a), (b), 185.103, 185.109, 185.110, 185.112, 185.125, 185.131, 185.231, 185.234, 185.238, 185.276, 185.369, 185.444, and 185.461 of the said regulations are hereby amended to read as follows:

§ 185.27 *Weighing tanks.* Where distilled spirits deposited in storage tanks in a warehouse located on the distillery premises are to be withdrawn for transfer by pipe line to the fortifying room of a bonded winery on contiguous premises, or to a denaturing bonded warehouse on the distillery premises, or to a tank car for shipment, as hereinafter provided in these regulations, the proprietor of the warehouse must provide for use in weighing such spirits one or more suitable weighing tanks constructed in accordance with the following section: *Provided,* That where brandy only is to be transferred by pipe line from warehouse storage tanks, and such transfer is to be made direct to a weighing tank in the fortifying room of a contiguous winery and weighed therein as provided in § 185.444, no weighing tank need be installed on the warehouse premises.* (Sec. 2873, I.R.C.)

§ 185.84 *Colors for pipe lines.* The pipe lines of warehouses located on distillery premises must be shown on the plans in the colors in which they are required to be painted, as follows:

Black	Distilled spirits.
White	Water.
Aluminum	Steam.
Orange	Air.

*(Sec. 2873, I.R.C.)

§ 185.90 *Change in name.* Where there is a change in the individual, firm, or corporate name of the proprietor of an internal revenue bonded warehouse, he must comply with the following requirements:

(a) *Amended permit.* If engaged in the business of warehousing and bottling distilled spirits, and if other than an agency of a State or political subdivision thereof, or an officer or employee of any such agency, procure from the district supervisor under the Federal Alcohol Administration Act an amended basic permit authorizing the warehousing and bottling of distilled spirits under the new name.

(b) *Amended application, Form 27-D.* Submit to the district supervisor an amended application on Form 27-D, in triplicate, covering the new name, which application must be approved before operations may be commenced under the new name.

§ 185.103 *Examination of qualifying documents.* Upon receipt of application, plat, plans, transportation and warehousing bond, export storage bond, if any, and other documents required by these regulations of persons desiring the establishment of internal revenue bonded warehouses, the district supervisor will examine the same to determine whether they have been properly executed and whether they reflect compliance with the requirements of the law and regulations. Where any required document has not been filed, or where errors or discrepancies are found in those filed, or where the documents filed do not reflect compliance with these regulations, action thereon will be held in abeyance until the omission, or error or discrepancy, has been rectified, and there has been full compliance with all requirements.*

§ 185.109 *Other causes for disapproval.* The district supervisor will not recommend approval of any application for the establishment of an internal revenue bonded warehouse unless (1) the capacity of the warehouse is commensurate with the prospective needs of the area or locality in which it is situated and in any event not less than 10,000 barrels, or the equivalent thereof in tank or case storage, (2) the location is suitable, (3) the transportation facilities adequate, (4) the design and construction of the warehouse are such as to insure economical supervision by Government officers, and (5) the prospective volume of spirits that will be received, stored, withdrawn, and bottled at the warehouse is sufficient to warrant the establishment of the warehouse and the expense of Government supervision: *Provided,* That these provisions shall not be applicable where the warehouse is an original warehouse to be operated by the distiller (not including lessee distillers) on or contiguous to the distillery premises, or is a second warehouse which the distiller desires to operate on premises contiguous to or near such original warehouse on account of lack of storage space in the original warehouse and the impracticability of expanding such warehouse. In any case where the warehouse has a bottling-in-bond department and the applicant is not entitled to a permit, the district supervisor will, upon disapproval of the permit application, return all copies of the qualifying documents to the applicant without action thereon or reference to the Commissioner.* (Sec. 2872, I.R.C.)

[1] § 74.7 is superseded.

[1] 5 F.R. 1950.

*§§ 185.27-185.461 appearing in this document, issued under the authority contained in section 3176, Internal Revenue Code.

§ 185.110 *Approval of qualifying documents.* If the district supervisor finds, upon examination of the inspection report and qualifying documents, that the person seeking the establishment of the internal revenue bonded warehouse has complied in all respects with the requirements of the law and these regulations, and that the application and other qualifying documents may properly be approved under §§ 185.108 and 185.109, he will note his recommendation for approval on all copies of the application, transportation and warehousing bond and the export storage bond, if any, and his approval on all copies of the plat and plans, and will forward all copies of the application, transportation and warehousing and export storage bonds, and the oirginal copy of the plat and plans and other qualifying documents, together with a copy of all inspection reports, to the Commissioner for final action. If the warehouse has a bottling-in-bond department, the issuance of a permit should be withheld pending approval by the Commissioner of the application, bond, and other qualifying documents required under the internal revenue laws.*

§ 185.112 *Disposition of qualifying documents.* Where the application, Form 27–D, transportation and warehousing bond, Form 1571, and the export storage bond, Form 654, if any, are approved by the Commissioner, the district supervisor will, upon receipt of approved copies of such documents from the Commissioner, as provided in Article XVI, forward one copy of the application, bonds, plat, plans, and other qualifying documents to the proprietor, and will retain one copy of such qualifying documents on file. If the application, transportation and warehousing bond and export storage bond, if any, are disapproved, the district supervisor will, upon receipt from the Commissioner of the disapproved copies of such documents, and all qualifying documents submitted therewith, return all copies of the qualifying documents to the proprietor, with advice as to the reasons for disapproval.*

§ 185.125 *Transportation and warehousing bonds.* Transportation and warehousing bonds, Form 1571, may be terminated as to liability (1) for spirits consigned to the internal revenue bonded warehouse after a specified future date, pursuant to application by the surety as provided in § 185.131, (2) for transactions subsequent to the effective date of an approved superseding bond, or (3) for future transactions upon discontinuance of business by the principal after withdrawal of all spirits from the warehouse.* (Sec. 2872, I.R.C.)

§ 185.131 *Application of the surety for relief from bond.* A surety on any bond required by these regulations may at any time in writing notify the principal and the district supervisor in whose office the bond is on file that he desires, after a date named, which shall be at least 60 days after the date of notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two to the district supervisor, who will retain one copy and transmit the remaining copy to the Commissioner. If such notice is not thereafter in writing withdrawn the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved (1) in the case of a transportation and warehousing bond, Form 1571, from liability for spirits consigned to the internal revenue bonded warehouse wholly subsequent to the date named in the notice, (2) in the case of an export storage bond, Form 654, from liability for spirits bottled in bond for temporary storage for export wholly subsequent to the date named in the notice, or (3) in the case of direct export bonds, Forms 547 and 657, transportation for export bonds, Forms 548 and 658, bonds covering transportation to customs manufacturing bonded warehouses, Forms 643 and 1618, or bonds for the withdrawal of spirits for the use of the United States, Form 544, from liability for distilled spirits withdrawn for direct exportation, transportation for export, transportation to customs manufacturing bonded warehouses, or for the use of the United States, as the case may be, wholly subsequent to the date named in the notice. This notice may not be given by an agent of the surety unless it is accompanied by a power of attorney duly executed by the surety authorizing him to give such notice or by a verified statement that such power of attorney is on file with the Department. The surety must also file with the district supervisor an acknowledgment or other proof of service of such notice on the principal.*

§ 185.231 *Rate of tax.* The law imposes a tax on distilled spirits produced in or imported into the United States at the rate of $3 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid when withdrawn from bond, except brandy distilled at less than 190 degrees of proof on which the tax is imposed at the rate of $2.75 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.* (Sec. 2800 (a) (1), I.R.C.)

§ 185.234 *Number and size.* Samples of brandy or fruit spirits for laboratory analysis must be taken from packages designated as sample packages. Such samples may not exceed one-half pint from any package at any one time, unless it is shown that such is an insufficient quantity for the purpose for which the sample is desired, and the Commissioner authorizes the taking of a larger sample, not to exceed one pint. The number of packages from which samples are taken must be restricted to the minimum necessary to accomplish the purpose of the laboratory analysis. As a rule, not more than one or two samples should be required at any one time from a given lot of brandy or fruit spirits of the same distillation, kind of cooperage, etc. When the warehouseman desires to procure samples from a given lot of brandy or fruit spirits in warehouse, he will limit the number of packages from which it is desired to take samples to the minimum necessary to procure representative samples of such spirits. Thereafter, if it is desired to procure additional samples from the same lot of spirits, the samples should be taken from the same packages.* (Sec. 3037, I.R.C.)

§ 185.238 *Number, size, and use.* The warehouseman may remove from containers in the warehouse samples of distilled spirits other than brandy or fruit spirits, for analytical purposes, or organoleptic examination only. Packages from which such samples are taken will be designated as sample packages. Such samples may not exceed one-half pint from any container at any one time, unless it is shown that such is an insufficient quantity for the purpose for which the sample is desired, and the Commissioner authorizes the taking of a larger sample, not to exceed one pint. The total number of samples from all containers must be restricted to the minimum necessary to determine the quality of the spirits. As a rule, not more than one or two samples should be required from a given lot of spirits of the same distillation, kind of cooperage, storage, etc. When the warehouseman desires to procure samples from a given lot of spirits in warehouse, he will limit the number of packages from which it is desired to take samples to the minimum necessary to procure representative samples of such spirits. Thereafter, if it is desired to procure additional samples from the same lot of spirits, the samples should be taken from the same packages.*

§ 185.276 *Issuance of tax-paid stamps.* The collector will issue the tax-paid stamps. Each tax-paid stamp shall bear the signature of the collector, who shall write or stamp thereon the date of payment of the tax, by whom paid, the number of gallons and tenths of gallons of proof spirits, and the serial number of the cask. Facsimile signatures of collectors may be affixed by the use of hand stamps to the tax-paid stamps, care being taken to use only such ink as will neither fade nor blur. The collector will enter the serial numbers of the stamps in the appropriate spaces on all copies of Forms 179 and 1520, sign the certificate of tax-payment on all copies of Form 179, retain one copy each of Form 179 and Form 1520, and return the remaining three copies of Form 179 and two copies of Form 1520 to the warehouseman with the stamps.* (Sec. 2802 (a), I.R.C.)

§ 185.369 *Records.* When the spirits have been removed from the export storage warehouse the storekeeper-gauger shall make appropriate entries on Form 1516 in the statement "Export Storage

Warehouse Transactions," and the proprietor shall report the removal on Form 52C.* (Sec. 2904, I.R.C.)

§ 185.444 *Gauge of brandy.* The brandy will be gauged in weighing tanks in the warehouse and run directly from such tanks to fortifying tanks or brandy storage tanks in the fortifying room of the winery, except that where no weighing tank is provided in the warehouse the brandy may be gauged in a weighing tank in the fortifying room, in which case the brandy will be run direct from the storage tanks in the warehouse to the weighing tank in the fortifying room.* (Secs. 2883, 3031 (a), I.R.C.)

§ 185.461 *Bulk containers.* Under the regulatons issued pursuant to the Federal Alcohol Administration Act (27 CFR, Part 3), proprietors of internal revenue bonded warehouses may sell or dispose of distilled spirits in bulk, i. e., in containers having a capacity in excess of 1 gallon, (1) to distillers and proprietors of internal revenue bonded warehouses, industrial alcohol plants and industrial alcohol bonded warehouses, including those operating tax-paid bottling houses; (2) to proprietors of class 8 customs bonded warehouses (imported spirits only); (3) to rectifiers; (4) to winemakers (brandy or alcohol) for fortification of wine; (5) to any agency of the United States, or of any State or political subdivision thereof; (6) for export; (7) on warehouse receipts, conforming to the regulations issued under the Federal Alcohol Administration Act, for distilled spirits in internal revenue bonded warehouses; and (8) for industrial use in accordance with the regulations issued under the Federal Alcohol Administration Act (27 CFR, Part 2), as follows: For experimental purposes, and for use in the manufacture (a) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (b) of toilet products; (c) of flavoring extracts, sirups, or food products; or (d) of scientific, chemical, mechanical, or industrial products; provided such products are unfit for beverage use. Distilled spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may, however, upon tax-payment, be transported for beverage purposes only; and under the regulations issued pursuant to the Federal Alcohol Administration Act (27 CFR, Part 3) warehousemen may not sell in bulk for industrial use other distilled spirits (except spirits —fruit or alcohol) unless such spirits are shipped or delivered directly to the industrial user thereof. (Sec. 6, 49 Stat. 985; 27 U.S.C. Sup., 206.)

[SEAL] GUY T. HELVERING,
Commissioner.

Approved, September 13, 1940.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 40-3890; Filed September 16, 1940; 3:44 p. m.]

[Regulations 107]

PART 403—EXCISE TAX ON EMPLOYERS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT

INTRODUCTORY

SUBPART A

Scope of Regulations

SUBPART B

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Measure and Computation of Tax

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SUBPART E

Returns, Payment of Tax, and Records

INTRODUCTORY

§ 403.1 *Chronological description of pertinent statutes and regulations*—(a) *Title IX of the Social Security Act and regulations thereunder; calendar years 1936, 1937, and 1938*—(1) *Statutes.* Title IX of the Social Security Act, approved August 14, 1935 (49 Stat. 639; 42 U.S.C., Sup. V, 1101 to 1110, inclusive), imposes, for each of the three calendar years 1936, 1937, and 1938, an excise tax on employers of eight or more employees, measured by wages payable with respect to employment performed during the calendar year. (Title IX of the Social Security Act has been superseded, with respect to the calendar year 1939 and subsequent calendar years, as indicated in paragraph (b) (1) of this section.)

Section 902 (a), (b), (c), (d), and (h) of the Social Security Act Amendments of 1939, approved August 10, 1939 (53 Stat. 1399), provides for certain credits against, and refunds of, the tax imposed under Title IX of the Social Security Act for the calendar years 1936, 1937, and 1938. Section 810 of the Revenue Act of 1938, enacted May 28, 1938 (52 Stat. 576), contained an earlier provision for credits against, and refunds of, such tax for the calendar year 1936.

Section 902 (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400) provides, in part, that no tax shall be collected under Title IX of the Social Security Act with respect to services performed in the employ of foreign governments and certain of their instrumentalities.

Section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides, in part, that no tax shall be collected under Title IX of the Social Security Act with respect to certain services performed in salvaging timber and clearing debris left by a hurricane.

(2) *Regulations.* Regulations relating to the tax for the calendar years 1936, 1937, and 1938 under Title IX of the Social Security Act are set forth in:

(i) Regulations 90, approved February 17, 1936 [Part 400, Title 26, Code of Federal Regulations], as amended, entitled "Regulations 90 Relating to the Excise Tax on Employers under Title IX of the Social Security Act." (Treasury Decision 4616, approved December 20, 1935, relating to the records to be maintained with respect to the tax under Title IX of the Social Security Act, was superseded by article 307 of such Regulations 90 [§ 400.307 of such Title 26].)

(ii) Treasury Decision 4726, approved January 21, 1937, extending the time for filing returns and paying tax under Title IX of the Social Security Act for the calendar year 1936.

(iii) Treasury Decision 4873, approved November 12, 1938 [Part 458, Subpart A, Title 26, Code of Federal Regulations, 1938 Sup.], and Treasury Decision 4878, approved January 4, 1939 [Part 458, Subpart C, of such Title 26, 1939 Sup.], both relating to the inspection of returns, including returns made under Title IX of the Social Security Act. (Treasury Decision 4797, approved March 25, 1938 [Part 458, Subpart A, of such Title 26], and Treasury Decision 4798, approved March 25, 1938 [Part 458, Subpart C, of such Title 26], both relating to the inspection of returns, including returns made under Title IX of the Social Security Act, were superseded by Treasury Decisions 4873 and 4878, respectively.)

(For amendments to Regulations 90, see Treasury Decision 4812, approved June 18, 1938 [Part 400 of such Title 26, 1938 Sup.]; Treasury Decision 4876, approved November 30, 1938 [Part 400 of such Title 26, 1938 Sup.]; Treasury Decision 4933, approved September 6, 1939 [Part 400 of such Title 26, 1939 Sup.]; Treasury Decision 4937, approved September 9, 1939 [Part 400 of such Title 26, 1939 Sup.]; and Treasury Decision 4940, approved September 20, 1939 [Part 400 of such Title 26, 1939 Sup.].)

(b) *Federal Unemployment Tax Act and regulations thereunder; calendar year 1939 and subsequent years*—(1) *Statutes.* The provisions of Title IX of the Social Security Act were reenacted in the Internal Revenue Code, approved February 10, 1939, as subchapter C of chapter 9 thereof (53 Stat. 183). Under the authority contained in section 1611 of subchapter C of chapter 9 of the Code, as added by section 615 of the Social Security Act Amendments of 1939 (53 Stat. 1396), such subchapter may be cited as the "Federal Unemployment Tax Act." Section 1600 of the Federal Unemployment Tax Act, as amended by section 608 of the Social Security Act Amendments of 1939, imposes an excise tax for the calendar year 1939 and each calendar year thereafter on employers of eight or more employees, measured by the wages paid during the calendar year with respect to employment after December 31, 1938.

Sections 608 to 613, inclusive, and 615 of the Social Security Act Amendments of 1939 (53 Stat. 1387, 1396) effected substantial changes in the provisions of the Federal Unemployment Tax Act with respect to the tax for the calendar year 1939 and subsequent calendar years. Section 614 of the Social Security Act Amendments of 1939 (53 Stat. 1392) amended, effective January 1, 1940, section 1607 of the Federal Unemployment Tax Act with respect to the tax for the calendar year 1940 and subsequent calendar years. In addition, the application of the Federal Unemployment Tax Act is modified by section 13 (a) of the Railroad Unemployment Insurance Act, approved June 25, 1938 (52 Stat. 1110); by section 902 (e) and (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400); and by section 2 of the Act of August 11, 1939 (53 Stat. 1420). The applicable provisions of the Federal Unemployment Tax Act, as so amended, and the provisions making such modifications, as well as certain applicable provisions of the internal revenue laws of particular importance, have been inserted in the appropriate places in, and are to be read in connection with, these regulations.

(2) *Regulations.* Regulations relating to the tax under the Federal Unemployment Tax Act are set forth in:

(i) Regulations 90, as amended, as made applicable to the Federal Unemployment Tax Act and other provisions of the Internal Revenue Code by Treasury Decision 4835, approved February 11, 1939 [Part 465, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.]. Regulations 90, as so made applicable to the Internal Revenue Code, relate only to the tax for the calendar year 1939.

(ii) Treasury Decision 4929, approved August 28, 1939 [Part 458, Subpart F, Title 26, Code of Federal Regulations, 1939 Sup.], and Treasury Decision 4945, approved September 20, 1939 [Part 458, Subpart H, of such Title 26, 1939 Sup.], both relating to the inspection of returns, including returns made under the Federal Unemployment Tax Act.

(For amendments to Regulations 90, as amended, as made applicable to the Internal Revenue Code, see Treasury Decision 4931, approved August 29, 1939 [Part 400 of such Title 26, 1939 Sup.]; Treasury Decision 4933, approved September 6, 1939 [Part 400 of such Title 26, 1939 Sup.]; Treasury Decision 4940, approved September 20, 1939 [Part 400 of such Title 26, 1939 Sup.]; and Treasury Decision 4953, approved November 9, 1939 [Part 400 of such Title 26, 1939 Sup.]. See § 403.101, relating to the scope of these regulations which are applicable

to the tax for the calendar year 1940 and subsequent calendar years.) *

SUBPART A—SCOPE OF REGULATIONS

§ 403.101 *Scope of regulations*—(a) *Tax with respect to wages paid after 1939.* These regulations relate to the excise tax for the calendar year 1940 and subsequent calendar years with respect to wages paid after December 31, 1939, imposed on employers of eight or more employees by the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code), as amended and modified by the Social Security Act Amendments of 1939 and other provisions of law. (See § 403.1 (b) (1) for a chronological description of the pertinent statutes.)

(b) *Employment.* In addition to employment in the case of remuneration therefor paid on or after January 1, 1940, these regulations also relate to employment performed on or after such date in the case of remuneration therefor paid prior to such date.*

SUBPART B—DEFINITIONS

SECTION 615 OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

FEDERAL UNEMPLOYMENT TAX ACT

Subchapter C of chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 1611. This subchapter may be cited as the 'Federal Unemployment Tax Act'."

SECTION 2 OF THE ACT OF FEBRUARY 10, 1939 (53 STAT. 1)

INTERNAL REVENUE CODE

This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as I. R. C.".

SECTION 1607 OF THE ACT

DEFINITIONS

When used in this subchapter—

(a) EMPLOYER. The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) WAGES. 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—

(1) 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 sch calendar year;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make.

(c) EMPLOYMENT. The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

(1) Agricultural labor (as defined in subsection (1));

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

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

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600;

(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, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act;

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1);

(C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (i) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (ii) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (i) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (ii) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

(E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition);

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; or

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

(d) INCLUDED AND EXCLUDED SERVICE. If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services

*§§ 403.1 to 403.606, inclusive, are issued under the authority contained in section 1609 of the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code), 53 Stat. 188, and are generally preceded by the statutory provisions to which they, respectively, refer.

of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (c).

(e) STATE AGENCY. The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) UNEMPLOYMENT FUND. The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b).

(g) CONTRIBUTIONS. The term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) COMPENSATION. The term "compensation" means cash benefits payable to individuals with respect to their unemployment.

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

(j) STATE. The term "State" includes Alaska, Hawaii, and the District of Columbia.

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

(l) AGRICULTURAL LABOR. The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (Sec. 1607, I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939)

SECTION 3797 (a) AND (b) OF THE INTERNAL REVENUE CODE

DEFINITIONS

(a) When used in this title [Internal Revenue Code] * * *—

* * * * *

(2) PARTNERSHIP * * *. The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation * * *.

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

* * * * *

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

(9) UNITED STATES. The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

* * * * *

(11) SECRETARY. The term "Secretary" means the Secretary of the Treasury.

(12) COMMISSIONER. The term "Commissioner" means the Commissioner of Internal Revenue.

(13) COLLECTOR. The term "collector" means collector of internal revenue.

(14) TAXPAYER. The term "taxpayer" means any person subject to a tax imposed by this title.

* * * * *

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

§ 403.201 *General definitions and use of terms.* As used hereinafter in these regulations—

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

(b) *Social Security Act* means the Act approved August 14, 1935 (49 Stat. 620).

(c) *Internal Revenue Code* means the Act approved February 10, 1939 (53 Stat., Part 1), entitled "An Act To consolidate and codify the internal revenue laws of the United States," as amended.

(d) *Social Security Act Amendments of 1939* means the Act approved August 10, 1939 (53 Stat. 1360).

(e) *Federal Unemployment Tax Act* means subchapter C of chapter 9 of the Internal Revenue Code, as amended.

(f) *Act* means the Federal Unemployment Tax Act, as defined in this section.

(g) *Federal Insurance Contributions Act* means subchapter A of chapter 9 of the Internal Revenue Code, as amended.

(h) *Railroad Unemployment Insurance Act* means the Act approved June 25, 1938 (52 Stat. 1094), as amended.

(i) *Regulations 90* means "Regulations 90 Relating to the Excise Tax on Employers under Title IX of the Social Security Act," approved February 17, 1936 [Part 400, Title 26, Code of Federal Regulations], as amended, as made applicable to subchapter C of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4335, approved February 11, 1939 [Part 465, Subpart B, of such Title 26, 1939 Sup.], together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

(j) *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.

(k) *Tax* means the tax imposed by section 1600 of the Act.

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

(m) 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 1607 (c) OF THE ACT

EMPLOYMENT

The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date * * *

* * * * *

(Sec. 1607 (c), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

SECTION 1607 (c) OF THE FEDERAL UNEMPLOYMENT TAX ACT, AS ENACTED FEBRUARY 10, 1939

EMPLOYMENT

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) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the

age of twenty-one in the employ of his father or mother;

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

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

(7) 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 13 (a) OF THE RAILROAD UNEMPLOYMENT INSURANCE ACT

Effective July 1, 1939, section 907 (c) of the Social Security Act [codified as section 1607 (c) of the Federal Unemployment Tax Act] is hereby amended by substituting a semicolon for the period at the end thereof, and by adding: "(8) service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in said Act."

SECTION 902 (f) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No tax shall be collected * * * under * * * the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1940, which are described in subparagraphs (11) and (12) of sections * * * 1607 (c) of the Internal Revenue Code, as amended * * *

SECTION 2 OF THE ACT OF AUGUST 11, 1939 (53 STAT. 1420)

No tax shall be collected * * * under * * * the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land or clearing such land of brush and other debris left by a hurricane * * *

§ 403.202 *Employment prior to January 1, 1940.* Under the provisions of section 1607 (c) of the Federal Unemployment Tax Act, as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, services performed prior to January 1, 1940, constitute employment if they were employment as defined in section 1607 (c) prior to such date. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Unemployment Tax Act in force on and after such date, unless the services are excepted by section 1607 (c) of the Federal Unemployment Tax Act in force prior to such date. The services so excepted are the services excepted by the section (as originally enacted February 10, 1939), as modified by section 13 (a) of the Railroad Unemployment Insurance Act. Such section 13 (a) excepted from employment, effective July 1, 1939, services performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and services performed as an employee representative as defined in such Act.

The collection of tax under the Federal Unemployment Tax Act with respect to certain services performed prior to January 1, 1940, is prohibited, although such services are not excepted by section 1607 (c) of the Federal Unemployment Tax Act in force prior to such date. Section 902 (f) of the Social Security Act Amendments of 1939 provides that no tax shall be collected under the Act with respect to services rendered prior to January 1, 1940, which are described in paragraph (11), relating to services in the employ of foreign governments, and in paragraph (12), relating to services in the employ of certain instrumentalities of foreign governments, of section 1607 (c) of the Federal Unemployment Tax Act in force on and after January 1, 1940; and section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides that no tax shall be collected under the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land, or clearing such land of brush and other debris, left by a hurricane. Notwithstanding the provisions of § 403.201 (a), the term "employment," as used in these regulations, shall not be deemed to include services with respect to which the collection of tax is prohibited by such section 902 (f) or such section 2.

The tax to which these regulations relate applies with respect to remuneration paid by an employer on or after January 1, 1940, for services performed during the calendar year 1939, to the extent that the remuneration and services constitute wages and employment. (See §§ 403.227 and 403.228, relating to wages.)

Whether services performed prior to January 1, 1940, constitute employment within the meaning of these regulations shall be determined in accordance with the applicable provisions of Regulations 90.*

SECTION 1607 (c) OF THE ACT

EMPLOYMENT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

* * * * *

(Sec. 1607 (c), I. R. C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.203 *Employment after December 31, 1939.* Whether services performed on or after January 1, 1940, constitute employment is determined under section 1607 (c) of the Act, that is, section 1607 (c), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939. This section of these regulations, and §§ 403.204 and 403.205 (relating to who are employees and employers), § 403.206 (relating to excepted services in general), § 403.207 (relating to included and excluded services), and § 403.208 to 403.226, inclusive (relating to the several classes of excepted services), apply with respect only to services), and §§ 403.208 to 403.226, inclusive 1940. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 403.207. For provisions relating to services performed prior to January 1, 1940, see § 403.202.)

Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1607 (c) of the Act, constitutes employment within the meaning of the Act. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii, do not constitute employment.

With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service 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 employment within the meaning of the Act.*

§ 403.204 *Who are employees.* Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee. (The word "employer" as used in this section only, not withstanding the provisions of § 403.201 (a), includes a person who employs one or more employees.)

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 person 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.

No distinction is made 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.

Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act (see § 403.203).*

SECTION 1607 (a) OF THE ACT

EMPLOYER

The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more. (Sec. 1607 (a), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.205 *Who are employers.* Every person who employs eight or more employees in employment within the meaning of section 1607 (c) and (d) of the Act on a total of 20 or more calendar days during a calendar year, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

The several weeks in each of which occurs a day on which eight or more employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the eight or more employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is eight or more.

In determining whether a person employs a sufficient number of employees to be an employer subject to the tax, each employee is counted with respect to services which constitute employment as defined in section 1607 (c) of the Act (see § 403.203 of these regulations). No employee is counted, however, with respect to services which do not constitute employment as so defined.

The provisions of the preceding paragraph are subject to the provisions of section 1607 (d) of the Act, relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 403.207 of these regulations). For example, if the services of an employee during a pay period are deemed to be employment under section 1607 (d) of the Act, even though a portion thereof does not constitute employment under section 1607 (c), the employee is counted with respect to all services during the pay period. On the other hand, if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.*

SECTION 1607 (c) OF THE ACT

EMPLOYMENT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

* * * * * *

(Sec. 1607 (c), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.206 *Excepted services in general.* Services performed on or after January 1, 1940, by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 1607 (c) of the Act, that is, section 1607 (c), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939.

The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 403.208). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are excepted, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect only to services performed on or after January 1, 1940 (see § 403.203). (For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 403.207. For provisions relating to services performed prior to January 1, 1940, see § 403.202.)*

SECTION 1607 (d) OF THE ACT

INCLUDED AND EXCLUDED SERVICE

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (c). (Sec. 1607 (d), I. R. C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.207 *Included and excluded services.* If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 1607 (c) of the Act constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

If *one-half or more* of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then *all* the services of that employee for that person in that pay period shall be deemed to be employment.

If *less than one-half* of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then *none* of the services of that employee for that person in that pay period shall be deemed to be employment.

Example 1. Employee A is employed by B who operates a farm and a store.

A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

Example 2. Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment.

During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period." If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is *ordinarily* made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or, if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for three weeks' services, the "pay period" is still the calendar week.

If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee," or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 1607 (c) (9) of the Act (see § 403.216 of these regulations).

If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed herein are not aplicable, the tax attaches with respect to such services as constitute employment as defined in section 1607 (c) of the Act (provided such person is an employer as defined in section 1607 (a) of the Act and § 403.205 of these regulations).*

SECTION 1607 (c) (1) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(1) Agricultural labor (as defined in subsection (l)); (Sec. 1607 (c) (1), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

SECTION 1607 (l) OF THE ACT

AGRICULTURAL LABOR

The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (Sec. 1607 (l), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

SECTION 15 (g) OF THE AGRICULTURAL MARKETING ACT, AS AMENDED

As used in this Act, the term "agricultural commodity" includes * * * crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, Approved March 3, 1923. (Sec. 15 (g), Act of June 15, 1929, 46 Stat. 18, as added by sec. 3, Act of Mar. 4, 1931, 46 Stat. 1550, 12 U.S.C. 1141 j (g).)

SECTION 2 (c) AND (h) OF THE NAVAL STORES ACT

* * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine. (Sec. 2 (c), (h), Act of Mar. 3, 1923. 42 Stat. 1435, 7 U.S.C. 92 (c), (h).))

§ 403.208 *Agricultural labor*—(a) *In general.* Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 1607 (l) of the Act are excepted. The term as so defined includes services of the character described in paragraphs (b), (c), (d), and (e) of this section.

In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(b) *Services described in section 1607 (l) (1) of the Act.* Services performed on a farm by an employee of any person in connection with any of the following activities are excepted as agricultural labor:

(1) The cultivation of the soil;

(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(3) The raising or harvesting of any other agricultural or horticultural commodity.

The term "farm" as used in this and succeeding paragraphs of this section includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and

other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms."

(c) *Services described in section 1607 (l) (2) of the Act.* The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(1) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(2) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (1) above may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semi-skilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 1607 (l) (3) of the Act.* Services performed by an employee in the employ of any person in connection with any of the following operations are excepted as agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 1607 (l) (4) of the Act.* (1) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2), below), produced by such farmer or farmer-members of such organization or group of farmers are excepted, provided such services are performed as an incident to ordinary farming operations.

Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, are excepted as agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may be excepted whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2), above, do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excepted services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.*

SECTION 1607 (c) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; (Sec. 1607 (c) (2), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.209 *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, or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, are included within the above exception.

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

A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

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 and the services performed therein are not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the services performed therein are not within the exception.

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, groms, and chauffeurs of automobiles for family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college 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 1607 (c) (3) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(3) Casual labor not in the course of the employer's trade or business; (Sec. 1607 (c) (3), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.210 *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 carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are 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. C's business is that of operating a sawmill. He employs D for two hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

Example 3. E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be 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 1607 (c) (4) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(4) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States: (Sec. 1607 (c) (4), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.211 *Officers and members of crews.* The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

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 "officer or member 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.*

SECTION 1607 (c) (5) OF THE ACT

The term "employment" means * * * any service, of whatever nature performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (Sec. 1607 (c) (5), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.212 *Family employment.* Certain services are excepted because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(a) Services performed by an individual in the employ of his or her spouse;

(b) Services performed by a father or mother in the employ of his or her son or daughter; and

(c) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

Under (a) and (b), above, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under (c), in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

Services performed in the employ of a person other than an individual (such as a corporation or a partnership) are not within the exception.*

SECTION 1607 (c) (6) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law; (Sec. 1607 (c) (6), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.213 *United States and instrumentalities thereof.* Services performed in the employ of the United States Government are excepted. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States, or exempt from the tax imposed by section 1600 of the Act by virtue of any other provision of law.

Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the tax imposed by section 1600 of the Act by virtue of any other provision of law are not within the exception.

Services performed in the employ of a national bank or a State member bank of the Federal Reserve System, for example, are not within the exception.*

SECTION 1607 (c) (7) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 1600; (Sec. 1607 (c) (7), I. R. C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.214 *States and their political subdivisions and instrumentalities.* Services performed in the employ of any State, or of any political subdivision thereof, are excepted. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 1600 of the Act.

The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii.*

SECTION 1607 (c) (8) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * 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, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; (Sec. 1607 (c) (8), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.215 *Religious, charitable, scientific, literary, and educational organizations and community chests.* Services performed by an employee in the employ of an organization of the class specified in section 1607 (c) (8) of the Act are excepted.

For purposes of this exception the nature of the services performed is immaterial; the statutory test is the character of the organization for which the services are performed.

In all cases, in order to establish its status under the statutory classification,

the organization must meet the following three tests:

(a) It must be organized and operated exclusively for one or more of the specified purposes;

(b) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(c) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

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 1607 (c) (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 is not an educational organization. However, the publication of books or the giving of lectures advocating a cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting, to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial, and educational nature.

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 which 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 specified purposes.

If an organization has established its status under section 1607 (c) (8) of the Act, it need not thereafter make a return or any further showing with respect to its status under the Act unless it changes the character of its organization or operations or the purpose for which it was originally created. See, however, section 3312 (b) of the Internal Revenue Code relating to the statute of limitations in case no return is filed.*

SECTION 1607 (c) (9) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act; (Sec. 1607 (c) (9), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

SECTION 1 OF THE RAILROAD UNEMPLOYMENT INSURANCE ACT, AS AMENDED

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) 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 the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" 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 Board, 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. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations.

(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1 (a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in section 1 (a) who before or after August 29, 1935, was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

* * * * *

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, payable for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation payable to any employee with respect to any calendar month, no part of any compensation in excess of $300 shall be recognized.

* * * * *

(r) The term "Board" means the Railroad Retirement Board.

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

* * * * *

(Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1–6, 20, Act of June 20, 1939, 53 Stat. 845, 848, 45 U.S.C., Sup. V, 351.)

§ 403.216 *Railroad industry—employees and employee representatives under the Railroad Unemployment Insurance Act.* Services performed by an individual as an "employee" or as an "employee representative," as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted.*

SECTION 1607 (c) (10) (A) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 101, if—

(i) the remuneration for such service does not exceed $45, or

(ii) such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

(Sec. 1607 (c) (10) (A), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

SECTION 101 OF THE INTERNAL REVENUE CODE

EXEMPTIONS FROM TAX ON CORPORATIONS

The following organizations shall be exempt from taxation under this chapter [chapter 1—income tax]—

(1) Labor * * * organizations;
(2) Mutual savings banks not having a capital stock represented by shares;
(3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
(4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

* * * * *

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;
(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;
(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;
(11) Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;
(12) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;
(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;
(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter;
(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

* * * * *

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments;
(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

* * * * *

(Sec. 101, I. R. C., as amended by sec. 217, Revenue Act of 1939.)

§ 403.217 *Organizations exempt from income tax*—(a) *In general.* This section deals with the exception of services performed in the employ of certain organizations exempt from income tax under section 101 of the Internal Revenue Code. If the services meet the tests set forth in paragraph (b), (c), or (d), such services are excepted.

(See also § 403.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, literary, and educational organizations and community chests of the type described in section 101 (6) of the Internal Revenue Code; § 403.218 for provisions relating to the exception of services performed in the employ of agricultural and horticultural organizations exempt from income tax under section 101 (1) of the Code; § 403.219 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (16) of the Code; and § 403.220 for provisions relating to the exception of services performed in the employ of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.)

(b) *Remuneration not in excess of $45 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed $45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example 1. X is a local lodge of a fraternal organization and is exempt from income tax under section 101 (3) of the Internal Revenue Code. X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1940 (that is, January 1, 1940, through March 31, 1940, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter *does not* exceed $45, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see section 403.205). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax.

B's services, however, are not excepted during such quarter since the remuneration therefor *does* exceed $45. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example 2. The facts are the same as in example 1, above, except that on April 1, 1940, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1940, through June 30, 1940, both dates inclusive), A earns $60. Since A's remuneration for services during such quarter *does* exceed $45, such services are not excepted. A, therefore, is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example 3. The facts are the same as in example 1, above, except that A earns $120 for services performed during the year 1940, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter *does not* exceed $45. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year *does* exceed $45, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 101 of the Internal Revenue Code are excepted:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* Services performed in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 403.221.)*

SECTION 1607 (c) (10) (B) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(10) (B) Service performed in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1); (Sec. 1607 (c) (10) (B), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

SECTION 101 (1) OF THE INTERNAL REVENUE CODE

EXEMPTIONS FROM TAX ON CORPORATIONS

The following organizations shall be exempt from taxation under this chapter—

(1) * * * agricultural, or horticultural organizations;

§ 403.218 *Agricultural and horticultural organizations exempt from income tax.* Services performed by an employee in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1607 (c) (10) (C) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(10) (C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (I) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (II) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses; (Sec. 1607 (c) (10) (C), I. R. C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.219 *Voluntary employees' beneficiary associations.* Services performed by an employee in the employ of an organization of the character described in section 1607 (c) (10) (C) of the Act are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1607 (c) (10) (D) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if (I) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and (II) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual; (Sec. 1607 (c) (10) (D), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.220 *Federal employees' beneficiary associations.* Services performed by an employee in the employ of an organization of the character described in section 1607 (c) (10) (D) are excepted.

For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.*

SECTION 1607 (c) (10) (E) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(10) (E) Service performed in any calendar quarter in the employ of a school, college, or university, not exempt from income tax under section 101, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university, and the remuneration for such service does not exceed $45 (exclusive of room, board, and tuition); (Sec. 1607 (c) (10) (E), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.221 *Students employed by schools, colleges, or universities not ex-*

empt from income tax. Services performed in a calendar quarter by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, provided:

(a) The services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(b) The remuneration for such services performed in such calendar quarter does not exceed $45, exclusive of room, board, and tuition furnished by the school, college, or university.

A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31.

For purposes of this exception, the type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the amount of remuneration for services performed by the employee in the calendar quarter, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in whose employ he performs the services.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see § 403.217 (d).) *

SECTION 1607 (c) (11) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative); (Sec. 1607 (c) (11), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.222 *Foreign governments.* Services performed by an employee in the employ of a foreign government are excepted. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.*

SECTION 1607 (c) (12) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof; (Sec. 1607 (c) (12), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.223 *Wholly owned instrumentalities of a foreign government.* Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country: *Provided:*

(a) The instrumentality is wholly owned by the foreign government;

(b) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(c) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.*

SECTION 1607 (c) (13) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law; (Sec. 1607 (c) (13), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.224 *Student nurses and hospital internes.* Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted provided the student nurse is enrolled and regularly attending classes in a nurses' training school, and such nurses' training school is chartered or approved pursuant to State law.

Services performed as an interne (as distinguished from a resident doctor) in the employ of a hospital are excepted provided the interne has completed a four years' course in a medical school chartered or approved pursuant to State law.*

SECTION 1607 (c) (14) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; or (Sec. 1607 (c) (14), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.225 *Insurance agents and solicitors.* Services performed by an employee as an insurance agent or insurance solicitor are excepted provided such services are performed solely for commissions.

If all or any part of the remuneration of an employee for services performed as an insurance agent or insurance solicitor is a salary, none of his services are excepted and his total remuneration (for example, salary, or salary and commissions) is included for purposes of computing the tax.*

SECTION 1607 (c) (15) OF THE ACT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(15) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution. (Sec. 1607 (c) (15), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.226 *Delivery and distribution of newspapers and shopping news.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, are excepted. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted.

The exception continues only during the time that the employee is under the age of 18.*

SECTION 1607 (b) OF THE ACT

WAGES

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—

(1) 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;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 or (B) of any payment required from an employee under a State unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make. (Sec. 1607 (b), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

SECTION 1608 OF THE ACT

DEDUCTIONS AS CONSTRUCTIVE PAYMENTS

Whenever under this subchapter 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 subchapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 403.227 *Wages*—(a) *In general.* Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1938, constitutes wages is determined under section 1607 (b) of the Act, that is, section 1607 (b), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939. This section of these regulations and § 403.228 (relating to exclusions from wages) apply with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1938.

The term "wages" means all remuneration for employment unless specifically excepted under section 1607 (b) of the Act (see § 403.228 of these regulations).

The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages within the meaning of the Act if paid as compensation for employment.

The basis upon which the remuneration is paid is 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, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

Ordinarily, facilities or privileges (such as entertainment, 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 employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges," however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees since generally these items constitute an appreciable part of the total remuneration of such employees.

Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 1607 (b) of the Act, constitutes wages even though at the time paid the individual is no longer an employee.

Example. B, an employer, employs A during the month of June 1940 in employment at a salary of $100 per month. A leaves the employ of B at the close of business on June 30, 1940. On July 15, 1940 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in June. The $100 is wages within the meaning of the Act, and the tax is payable with respect thereto.

(b) *Certain items included as wages*—(1) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(2) *Traveling 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 to the employer. Thus, the wages of a salesman, who is employed on a straight salary basis with an allowance to cover all necessary expenses incurred in the employer's business, are computed by adding to the salary the amount of the excess, if any, of the expense allowance over the expenses actually incurred and accounted for by the employee to the employer.

(3) *Deductions by an employer from wages of an employee.* The amount of any tax which is required by section 1401 (a) of the Federal Insurance Contributions Act to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages, and is deemed to be paid to the employee as wages at the time that the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the Federal Insurance Contributions Act, or any Act of Congress, or the law of any State, requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.*

§ 403.228 *Exclusions from wages*—(a) *$3,000 limitation.* The term "wages" does not include that part of the remuneration paid by an employer to an employee for employment performed for him during any calendar year which exceeds the first $3,000 paid by such employer to such employee for employment performed during such calendar year.

The $3,000 limitation applies only if the remuneration paid by an employer to an employee 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 in any one calendar year.

Example 1. Employer B, in 1940, pays employee A $2,500 on account of $3,000 due him for employment performed in 1940. In 1941 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1940) and also $3,000 for employment performed in 1941. Although A is actually paid remuneration of $3,500 during the calendar year 1941, that entire amount is subject to tax, that is, $3,000 with respect to employment during 1941 and $500 with respect to employment during 1940 (this $500 added to the $2,500 paid in 1940 constitutes the maximum wages which could be paid to employee A by employer B with respect to employment during the calendar year 1940).

If an employee has more than one employer during a calendar year, the limitation of wages to the first $3,000 of remuneration paid to such employee applies, not to the aggregate remuneration paid by all employers with respect to employment during that year, but instead to the remuneration paid by each employer with respect to employment during that year. In such case the first $3,000 paid by each employer to such employee constitutes wages and is subject to the tax.

Example 2. Employer D pays employee C a salary of $600 a month for employment during the first seven months of 1940 or total remuneration of $4,200. At the end of the fifth month employer D has paid employee C $3,000, and only that part of the total remuneration constitutes wages subject to the tax. The $600 paid by employer D to employee C for employment during the sixth month, and the like amount paid for employment during the seventh month, are not included as wages and are not subject to

the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. Employer E pays employee C $600 a month for the remaining five months of 1940, or total remuneration of $3,000. The entire $3,000 paid by employer E constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer D and the entire $3,000 paid by employer E constitute wages.

Example 3. F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation during the calendar year 1940, each such corporation being an employer for such year. F is paid a salary of $3,000 by each such corporation. Each $3,000 paid to F by each of the corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the tax.

(b) *Employers' plans providing for payments on account of retirement, sickness or accident disability, medical and hospitalization expenses, or death.* Under section 1607 (b) (2) of the Act, the term "wages" does not include the amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(1) retirement,

(2) sickness or accident disability,

(3) medical and hospitalization expenses in connection with sickness or accident disability, or

(4) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) *Payment by an employer of employees' tax or employees' contributions under a State law.* The term "wages" does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employees' tax imposed by section 1400 of the Federal Insurance Contributions Act, or (2) any payment required from an employee under a State unemployment compensation law.

(d) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, are excluded from "wages," provided the employer is not legally bound by contract, statute, or otherwise, to make such payments.

(e) *Miscellaneous.* In addition to the exclusions specified in paragraphs (a), (b), (c), and (d), the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 1607 (c) of the Act.

(2) Remuneration for services which are deemed not to be employment under section 1607 (d) of the Act.

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.*

SUBPART C—MEASURE AND COMPUTATION OF TAX

SECTION 1600 OF THE ACT

RATE OF TAX

Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938. (Sec. 1600, I. R. C., as amended by sec. 608, Social Security Act Amendments of 1939.)

§ 403.301 *Persons liable for tax.* Every person who is an employer as defined in section 1607 (a) of the Act (see § 403.205 of these regulations) is liable for the tax. Even if an employer is not subject to any State unemployment compensation law, he is nevertheless liable for the tax. However, if he is subject to such a State law, he may be entitled to certain credits against the tax (see subpart D of these regulations). (For provisions relating to payment of the tax, see § 403.508.)*

§ 403.302 *Measure of tax.* The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See §§ 403.202 and 403.203, relating to employment, and §§ 403.227 and 403.228, relating to wages.)*

§ 403.303 *Rate and computation of tax.* The rate of tax is 3 percent. The tax is computed by applying the 3 percent rate to the wages paid during the calendar year with respect to employment after December 31, 1938.*

§ 403.304 *When wages are paid.* Wages are paid for purposes of the tax when actually or constructively paid. 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 § 403.502, relating to the return on which wages are to be reported.)*

SUBPART D—CREDITS AGAINST TAX

SECTION 1601 OF THE ACT

CREDITS AGAINST TAX

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS. (1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 1600 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 1603.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to file a return for such year; except that credit shall be permitted for contributions paid after such last day but before July 1 next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day. The preceding provisions of this subdivision shall not apply to the credit against the tax of a taxpayer for any taxable year if such taxpayer's assets, at any time during the period from such last day for filing a return for such year to June 30 next following such last day, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

* * * * *

(c) LIMIT ON TOTAL CREDITS. The total credits allowed to a taxpayer under this subchapter shall not exceed 90 per centum of the tax against which such credits are allowable. (Sec. 1601, I.R.C., as amended by sec. 609, Social Security Act Amendments of 1939.)

SECTION 1607 (f) AND (g) OF THE ACT

(f) UNEMPLOYMENT FUND. The term "unemployment fund" means a special fund,

established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended, shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606 (b).

(g) CONTRIBUTIONS. The term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ. (Sec. 1607 (f), (g), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

SECTION 902 (e) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

Notwithstanding the provisions of section 1601 (a) (2) of the Internal Revenue Code, as amended, credit shall be permitted under such section 1601, against the tax for the taxable year in which remuneration is paid for services rendered during a prior year, for the amounts of contributions with respect to such remuneration which have not been credited against the tax for any prior taxable year. Credit shall be permitted under this subsection only against the tax for the years 1940, 1941, and 1942, and only for contributions with respect to remuneration for services rendered after December 31, 1938.

SECTION 902 (i) OF THE SOCIAL SECURITY ACT AMENDMENTS OF 1939

No part of the tax imposed by the Federal Unemployment Tax Act * * *, whether or not the taxpayer is entitled to a credit against such tax, shall be deemed to be a penalty or forfeiture within the meaning of section 57j of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended.

§ 403.401 *Credit against tax for contributions paid*—(a) *In general.* Subject to the provisions of paragraphs (b), (c), (d), and (e), the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Social Security Board to contain the provisions specified in section 1603 (a) of the Act; provided that no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 1607 (c) of the Act.

(b) *Limitation on amount of credit allowable.* The total credit allowable to any taxpayer for contributions paid to State unemployment funds shall not exceed 90 percent of the tax against which such credit is applied.

Example. The Federal return of the O Company for the calendar year 1940 discloses a total tax of $10,000. The company is entitled to a credit against the tax by reason of contributions paid to State unemployment funds. The total amount of such credit, however, may in no event exceed $9,000 (90 percent of the Federal tax of $10,000), even though the O Company pays contributions in excess of $9,000.

(See § 403.402 (d), relating to the aggregate limitation in case an additional credit is taken under section 1601 (b) of the Act.)

(c) *Limitation on the time within which contributions may be paid in order to be allowable as credit*—(1) *General rule.* In order to be allowable as credit against the tax, contributions must have been actually paid into the State unemployment fund on or before the last day upon which the return for the taxable year is required to be filed, except that under the conditions described in subparagraph (2), (3), or (4), below, credit may be allowed for contributions paid after such last day. (The last day for filing the return is January 31 next following the close of the taxable year unless the time for filing the return is extended. See §§ 403.506 and 403.507.)

(2) *Exception when contributions are paid before July 1.* Contributions may be paid into a State unemployment fund after the last day upon which the return for the taxable year is required to be filed but before July 1 next following such last day, and in such case may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day.

Example 1. The Federal return of the M Company for the calendar year 1940 discloses a total tax of $12,000. The company is liable for total State contributions of $8,000 for such year. The due date of the company's Federal return is January 31, 1941, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1941. If the contributions had been paid on or before January 31, 1941, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, but before July 1, 1941, the M Company is entitled to a credit of 90 percent of the amount of the contributions ($8,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

Example 2. The facts are the same as in example 1, except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1941, the amount allowable as credit would have been $10,800 (90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, but before July 1, 1941, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,280 ($12,000 minus $9,720).

Example 3. The Federal return of the R Company for the calendar year 1940 discloses a total tax of $10,000. The company is liable for total State contributions of $9,000 for such year. The due date of the company's Federal return is January 31, 1941, no extension of time for filing the return having been granted. The R Company pays $8,000 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1941. If the $1,000 had been paid on or before January 31, 1941, that amount could have been credited against the tax (such amount plus the $8,000 paid on or before January 31, 1941, not exceeding 90 percent of the Federal tax of $10,000). Since the $1,000 was paid after January 31, but before July 1, 1941, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $8,000 allowable for the contributions paid on or before January 31, 1941. The net liability for Federal tax is thus $1,100 ($10,000, minus $8,900).

(3) *Exception when taxpayers' assets are in custody or control of certain fiduciaries.* Contributions of a taxpayer whose assets, at any time during the period from the last day upon which the return for the taxable year is required to be filed to June 30 next following such last day, both dates inclusive, are in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction, may be paid into the State unemployment fund at any time (subject, however, to the provisions of § 403.602 (c), relating to the statutory period of limitations applicable to credits), and upon such payment, may be credited against the tax in the same amount that would have been allowable as credit had the contributions been paid on or before the last day upon which the return for the taxable year was required to be filed.

(4) *Exception when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the

proper fund shall be deemed for purposes of credit to have been made on the date the return for such year was actually filed under section 1604 of the Act.

Example. Employer N, whose Federal return for the calendar year 1940 discloses a total tax of $1,000, employs individuals in State X and State Y during the calendar year 1940. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1941. When the error was discovered thereafter, N paid to State X contributions in the amount of $900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1941, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $900 against the Federal tax of $1,000, the net liability for Federal tax being $100 ($1,000 minus $900).

(d) *Limitation on the taxable year with respect to which contributions are allowable.* In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year. (See, however, paragraph (e), below.)

Example 1. Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ended December 31, 1940, all remuneration *payable* for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1941. On January 20, 1941, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1941, may be included in computing the credit against the tax for the calendar year 1940. This is true even though the remuneration paid on February 1, 1941 (if it constitutes "wages") is required to be reported in the Federal return for 1941 and not in the Federal return for 1940.

Example 2. Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ended December 31, 1940, certain remuneration paid on December 30, 1940, to an employee for services to be rendered after December 31. On January 20, 1941 N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1940, may be included in computing the credit against the tax for the calendar year 1940.

(e) *Special credit under section 902 (e) of the Social Security Act Amendments of 1939 against tax for the taxable years 1940, 1941, and 1942.* Notwithstanding the limitation set forth in paragraph (d), above (but subject to the limitations of paragraphs (a), (b), and (c), credit is allowable against the tax for the taxable year in which remuneration is paid for services performed during a prior year for such contributions paid into a State unemployment fund with respect to such remuneration as have not been credited against the tax for any prior taxable year, provided that:

(1) The contributions are paid with respect to remuneration for services performed after December 31, 1938; and

(2) The contributions shall be allowable as credit only against the tax for the taxable year 1940, 1941, or 1942.

Example. Employer M employs individuals in State Y during the calendar years 1939 and 1940. M's employees are *paid* $300,000 during 1939 for services rendered during such year. All of such amount is subject to the tax for such year. Under the unemployment compensation law of State Y, contributions are imposed at the rate of 2.7 percent of the remuneration *payable* for services performed in such year. In addition to the $300,000 *paid* in the calendar year 1939 for services rendered in such year, M is required under such law to report in his contribution returns for the year 1939, remuneration in the amount of $12,500 *payable* for services rendered in 1939 but not paid until 1940. On or before January 31, 1940, M pays contributions to the State for the calendar year 1939 in the amount of $8,437.50 (2.7 percent of $312,500). Since the credit for contributions paid to the State may not exceed 90 percent of the tax against which it is applied, the M Company may credit against the total tax of $9,000 (3 percent of $300,000), contributions in the amount of $8,100 (90 percent of $9,000). Thus, the contributions in the amount of $337.50 ($8,437.50 minus $8,100) based upon remuneration *payable* during 1939 but not *paid* until the calendar year 1940, for services performed during 1939, are not creditable against the tax for the year 1939.

During the calendar year 1940, M's employees are paid $300,000 for services rendered in the years 1939 and 1940. All of such amount is subject to the tax for the calendar year 1940. Effective January 1, 1940, the unemployment compensation law of State Y is amended to provide for contributions at the rate of 2.7 percent based on the remuneration paid (as distinguished from payable) for services performed after December 31, 1939. Under such law M is required to report on his contribution returns for the year 1940, remuneration in the amount of $287,500 paid to employees for services rendered after December 31, 1939 ($300,000 minus $12,500 paid in 1940 for services rendered in 1939). On or before January 31, 1941, M pays to the State contributions in the amount of $7,762.50 (2.7 percent of $287,500). Against the total tax of $9,000 for the calendar year 1940 (3 percent of $300,000), the M Company may credit the contributions in the amount of $7,762.50 paid with respect to the year 1940; and, under section 902 (e) of the Social Security Act Amendments of 1939, may also credit the contributions in the amount of $337.50 reported in the contribution returns for the year 1939 (such amount having been paid with respect to remuneration paid during the calendar year 1940 for services performed during the year 1939 and not credited against the tax for the year 1939).

(f) *Refund of State contributions.* If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contributions credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.*

SECTION 1601 (b) OF THE ACT

ADDITIONAL CREDIT. In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 per centum, whichever rate is lower. (Sec. 1601 (b), I.R.C., as amended by sec. 609, Social Security Act Amendments of 1939.)

§ 403.402 *Additional credit against tax*—(a) *In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 403.401 of these regulations), the taxpayer may be entitled to a further credit under section 1601 (b) of the Act. This further or *additional* credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 1602 of the Act. Generally, an additional credit is available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Social Security Board

for the taxable year as provided in section 1602 of the Act (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law*—(1) *Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Social Security Board certifies as a whole to the Secretary in accordance with the provisions of section 1602 of the Act, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 1607 (c) of the Act) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 1607 (c) of the Act) he was required to pay under the State law with respect to such year, whether or not paid.

The amount computed under (ii) should then be subtracted from the amount computed under (i), and the result will be the additional credit for the taxable year with respect to the law of that State.

Example. A employs individuals only in State X during the calendar year 1940. The unemployment compensation law of State X has been certified in its entirety to the Secretary by the Social Security Board for such year. The highest rate applied in such year under such State law to any taxpayer was 3 percent. However, A had obtained a rate of 1 percent under the law of such State and was required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law was $25,000. The amount of wages paid by A during that year with respect to employment under the Federal law likewise was $25,000, the Federal tax at the 3 percent rate being $750. A's additional credit under section 1601 (b) of the Act is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less:	
Contributions required to be paid at 1 percent rate	250
Additional credit to A	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in order to ascertain the additional credit ($425). Thus, A is entitled to an additional credit under section 1601 (b) of the Act of $425.

(2) *Certification with respect to particular provisions of a State law.* If the Social Security Board makes a certification to the Secretary with respect to particular provisions of a State law for any taxable year pursuant to section 1602 of the Act, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

(c) *Amount of additional credit allowable to taxpayer with respect to more than one State law.* If the taxpayer is entitled to additional credit with respect to more than one State law in any taxable year, the additional credit allowable with respect to each State law shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable against the tax for such year shall be the aggregate of the additional credits allowable with respects to such State laws.

(d) *Ninety percent limitation on credits.* The aggregate of the additional credit under section 1601 (b) of the Act, the credit under section 1601 (a) of the Act, and the special credit under section 902 (e) of the Social Security Act Amendments of 1939 shall not exceed 90 percent of the tax against which credit is taken.*

§ 403.403 *Proof of credit*—(a) *Credit under section 1601 (a) of the Act.* Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the Commissioner.

(1) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(i) The total amount of contributions required under the State law with respect to such calendar year (exclusive of penalties and interest) actually paid on or before the date the Federal return is required to be filed; and

(ii) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(2) An affidavit by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ.

(3) Such other or additional proof as the Commissioner may deem necessary to establish the right to the credit provided for under section 1601 (a) of the Act.

(b) *Special credit under section 902 (e) of the Social Security Act Amendments of 1939.* Special credit under section 902 (e) of the Social Security Act Amendments of 1939 against the tax for the calendar year 1940, 1941, or 1942 shall not be allowed unless there is submitted to the Commissioner:

(1) A statement by the taxpayer setting forth:

(i) The calendar year in which the remuneration was paid upon which the contributions claimed as special credit were based;

(ii) The total amount of such remuneration;

(iii) The calendar year (or each calendar year, if more than one) in which the services were performed for which such remuneration was paid;

(iv) The amount and date of payment of contributions based upon such remuneration; and

(v) The amount of such contributions which was not credited against the tax for any prior calendar year.

(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the special credit provided for under section 902 (e) of the Social Security Act Amendments of 1939.

(c) *Additional credit under section 1601 (b) of the Act.* Additional credit under section 1601 (b) of the Act shall not be allowed against the tax for any calendar year unless there is submitted to the Commissioner:

(1) A certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer:

(i) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law with respect to such calendar year;

(ii) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year;

(iii) The total amount of contributions the taxpayer was required to pay under the State law with respect to such calendar year, whether or not paid; and

(iv) The highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in (i), (ii), and (iii) with respect to each such period, as well as the total amount of contributions the taxpayer was required to pay under such law, whether or not paid, and the information called for in (iv).

(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the additional credit provided for under section 1601 (b) of the Act.*

SUBPART E—RETURNS, PAYMENT OF TAX, AND RECORDS

SECTION 1604 OF THE ACT

RETURNS

(a) REQUIREMENT. Not later than January 31, next following the close of the tax-

able year, each employer shall make a return of the tax under this subchapter for such taxable year. Each such return shall be made under oath, shall be filed with the collector for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

(b) EXTENSION OF TIME FOR FILING. The Commissioner may extend the time for filing the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(c) PUBLICITY. Returns filed under this subchapter shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that paragraph (2) of subsections (a), (b) and (f) of section 55 shall not apply. (Sec. 1604, I.R.C., as amended by sec. 612, Social Security Act Amendments of 1939.)

SECTION 1605 OF THE ACT

PAYMENT OF TAXES

(a) ADMINISTRATION. The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal-revenue collections.

(b) ADDITION TO TAX IN CASE OF DELINQUENCY. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the date the tax became due until paid.

(c) INSTALLMENT PAYMENTS. The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(d) EXTENSION OF TIME FOR PAYMENT. At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(e) FRACTIONAL PARTS OF A CENT. In the payment of any tax under this subchapter 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 1610 OF THE ACT

OTHER LAWS APPLICABLE

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

SECTION 2709 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1610 OF THE ACT

RECORDS, STATEMENTS, AND RETURNS

Every person liable to any tax imposed by this subchapter, 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.

SECTION 3603 OF THE INTERNAL REVENUE CODE

NOTICE REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS

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.

SECTION 3632 OF THE INTERNAL REVENUE CODE

AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY

(a) INTERNAL REVENUE PERSONNEL. (1) PERSONS IN CHARGE OF ADMINISTRATION OF INTERNAL REVENUE LAWS GENERALLY. 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.

(2) PERSONS IN CHARGE OF EXPORTS AND DRAWBACKS. Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

(b) OTHERS. Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person 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, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SECTION 3330 OF THE INTERNAL REVENUE CODE

WITNESSING OF RETURNS IN LIEU OF OATH

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.

SECTION 3612 (a), (b), AND (c) OF THE INTERNAL REVENUE CODE

RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR

(a) AUTHORITY OF COLLECTOR. If any person 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 from such information as he can obtain through testimony or otherwise.

(b) AUTHORITY OF COMMISSIONER. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise—

(1) TO MAKE RETURN. Make a return, or

(2) TO AMEND COLLECTOR'S RETURN. Amend any return made by a collector or deputy collector.

(c) LEGAL STATUS OF RETURNS. 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.

SECTION 3614 (a) OF THE INTERNAL REVENUE CODE

EXAMINATION OF BOOKS AND WITNESSES

TO DETERMINE LIABILITY OF THE TAXPAYER. 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 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 2702 (a) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1610 OF THE ACT

PAYMENT OF TAX

DATE OF PAYMENT. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed * * * for filing the return.

SECTION 3312 OF THE INTERNAL REVENUE CODE

PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION

Except in the case of income, estate, and gift taxes—

(a) GENERAL RULE. All internal revenue taxes shall (except as provided in subsections (b), (c), and (d)) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(b) FALSE RETURN OR NO RETURN. In case of a false or fraudulent return with intent to evade tax, or of a failure to file a return within the time required by law, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) WILLFUL ATTEMPT TO EVADE TAX. In case of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(d) COLLECTION AFTER ASSESSMENT. Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun—

(1) Within six years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

§ 403.501 *Returns.* Every employer (see § 403.205) shall make a return on Form 940 for each calendar year in accordance with the instructions and regulations applicable thereto. Copies of the prescribed form may be obtained from collectors.*

§ 403.502 *When to report wages.* Wages shall be reported in the tax return for the calendar year in which they were actually paid unless they were construc-

tively paid in a prior calendar year, in which case such wages shall be reported only in the return for such prior year.*

§ 403.503 *Termination of business*—(a) *Final returns.* The last return on Form 940 filed by a person who has ceased to be an employer by reason of the discontinuance, sale, or other transfer of his business shall be marked "Final return" by such person or the person filing the return.

(b) *Statements.* Each person who has ceased to be an employer by reason of the discontinuance, sale, or other transfer of his business shall promptly submit to the collector for the district in which such person filed his last return a statement, in writing, giving the address at which the records required by § 403.511 will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.*

§ 403.504 *Execution of returns.* Except as provided in this section, each return shall be signed and verified under oath or affirmation by (a) the individual, if the employer is an individual; (b) the president, vice president, or other principal officer, if the employer is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (d) the fiduciary, if the employer is a trust or estate. The employer's return may be executed by an agent in the name of the employer if an acceptable power of attorney is filed with the collector and if such return includes the wages paid to all employees of the employer for the period covered by the return.

The oath or affirmation may be administered by any person duly 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, or of the District of Columbia, wherein such oath or affirmation is administered, or by any 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. This section is not an exclusive enumeration of the persons who may administer oaths or affirmations.

If the tax shown to be payable by any return on Form 940 is $10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.*

§ 403.505 *Use of prescribed forms.* Copies of the prescribed return form will so far as possible be furnished employers by collectors without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper form should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. (See § 403.506, relating to the place and time for filing returns; see also section 403.503, relating to final returns.) If the prescribed form is not available, a statement made by the employer disclosing the amount of wages paid during the calendar year for which a return is required and the amount of tax due may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1) of the Internal Revenue Code (see § 403.605 (a) of these regulations) provided that, without unnecessary delay, such tentative return is supplemented by a return made on the proper form.

Each return, together with a copy thereof and any supporting data, shall be filled in and disposed of in accordance with the instructions and regulations applicable thereto. (See § 403.506, relating to the place and time for filing returns, and § 403.511 (c) and (e), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be carefully prepared so as fully and accurately 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. Consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation, or of a business operated by two different employers during the year.*

§ 403.506 *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 § 403.507, each return shall be filed on or before January 31 next following the calendar year 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 for failure to file a return within the prescribed time, see § 403.605 (a). See also section 2707 of the Internal Revenue Code relating to penalties.*

§ 403.507 *Extension of time for filing returns.* It is important that every employer render on or before January 31, next following the close of the calendar year, a return for such year as nearly complete as it is possible for him to prepare. However, the Commissioner is authorized to grant an extension of time for not more than 90 days for filing returns, under such rules and regulations as he may prescribe with the approval of the Secretary. Accordingly, authority for granting extensions of time for filing returns is hereby delegated to the several collectors of internal revenue. Application for extension of time for filing a return shall be addressed to the collector for the district in which the employer is required to file his return, and shall contain a full recital of the causes for the delay. The application shall be made in writing, and shall be filed with the collector on or before January 31 next following the close of the calendar year, or the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof. (For extensions of time for payment of tax, see § 403.509.)*

§ 403.508 *Payment of tax.* The tax is due and payable to the collector for the district in which the employer is required to file his return, without assessment by the Commissioner or notice by the collector, on the date fixed by law for filing the return, that is, on the 31st day of January next following the close of the calendar year for which the tax is due. The tax may, at the option of the taxpayer, be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before January 31, the second installment on or before April 30, the third installment on or before July 31, and the fourth installment on or before October 31. If the taxpayer elects to pay the tax in four installments, each installment must be equal in amount; but any installment may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. If the tax or any installment thereof is not paid in full on or before the date fixed for its payment either by the Act or by the Commissioner in accordance with the terms of an extension of time granted for the payment of the tax or installment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector. For provisions relating to interest, additions to tax, and penalties, see §§ 403.603, 403.604, and 403.605 of these regulations and section 2707 of the Internal Revenue Code.*

§ 403.509 *Extension of time for payment of the tax or installment thereof.* If it is shown to the satisfaction of the Commissioner that the payment of the

tax or any part or installment thereof upon the date or dates prescribed for the payment thereof will result in undue hardship to the taxpayer, the Commissioner, at the request of the taxpayer, may grant an extension of time for the payment for a period not to exceed six months from the date prescribed for the payment of such amount, part, or installment. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the taxpayer from making payment of the amount on the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

An application for an extension of time for the payment of such tax, part, or installment, should be made under oath on the prescribed form, and must be accompanied or supported by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. A sworn statement of assets and liabilities of the taxpayer is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the due date of the tax or installment shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved, subject to certain conditions of which the taxpayer will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of the tax or installment unless such application is made in writing, and is made to the collector on or before the due date of the tax or installment thereof for which the extension is desired, or on or before the date or dates prescribed for payment in any prior extension granted.

As a condition to the granting of such an extension, the Commissioner will usually require the taxpayer to furnish a bond on the prescribed form in an amount not exceeding double the amount of the tax or installment or to furnish other security satisfactory to the Commissioner for the payment of the tax or installment thereof, on the date prescribed for payment in the extension, so that the risk of loss to the Government will not be greater at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the tax or installment, the interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the taxpayer may file a bond secured by deposit of bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, equal in their total par value to an amount not exceeding double the amount of the tax or installment thereof, together with an agreement authorizing, in case of default, the collection or sale of such bonds or notes so deposited. A request by the taxpayer for an extension of time for the payment of one installment does not operate to procure an extension of time for payment of subsequent installments. If an extension of time for payment of the tax or any installment is granted, the amount, time for payment of which is so extended, shall be paid on or before the expiration of the period of the extension, together with interest at the prescribed rate on such amount from the date when the payment should have been made if no extension had been granted until the expiration of the period of the extension. (See section 1605 (d) of the Act.)*

§ 403.510 *Fractional part of a cent.* In the payment of the tax or any installment thereof 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 the tax or any installment thereof.*

§ 403.511 *Records*— (a) *Records of employers.* Every employer subject to the tax for any calendar year shall, with respect to each such year, keep such permanent records as are necessary to establish—

(1) the total amount of remuneration whether in cash or in a medium other than cash (including amounts deducted from such remuneration) paid to his employees during the calendar year for services performed after December 31, 1938;

(2) the amount of such remuneration which constitutes wages subject to the tax (see §§ 403.227 and 403.228);

(3) the amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (i) payments made and not deducted (or to be deducted) from the remuneration of his employees, and (ii) payments made and deducted (or to be deducted) from the remuneration of his employees; and

(4) the information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

If the total remuneration paid (item (1), above) and the amount thereof which is subject to the tax (item (2), above) are not equal, the reason therefor shall be made a matter of record.

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

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see § 403.203) during any calendar year but who considers that he is not an employer subject to the tax (see § 403.205) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax. No particular form is prescribed for keeping the records required by this paragraph.

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

(d) *Records of claimants.* Any person claiming refund, credit, or abatement of any tax, penalty, or interest shall keep a complete and detailed record with respect to such tax, penalty, or interest.

(e) *Place and period for keeping records.* All records required by these regulations shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (c) and (d) of this section shall be kept at such place of business.

Records required by paragraphs (a) and (c) of this section 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 paragraph (b) of this section shall be maintained for a period of at least four years after the due date of the tax for the calendar year to which they relate. Records required by paragraph (d) of this section (including any record required by paragraph (a) or (c) which relates to a claim) shall be maintained for a period of at least four years after the date the claim is filed.*

SUBPART F—MISCELLANEOUS PROVISIONS

Jeopardy Assessments

SECTION 3660 OF THE INTERNAL REVENUE CODE

JEOPARDY ASSESSMENT

(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 3690.

(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.

§ 403.601 *Jeopardy assessments.* Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, 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 3690 of the Internal Revenue Code.*

Refunds, Credits, and Abatements

SECTION 3770 (a) OF THE INTERNAL REVENUE CODE

AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS

TO TAXPAYERS—(1) ASSESSMENTS AND COLLECTIONS GENERALLY. Except as otherwise provided by law in the case of income, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, 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.

(2) ASSESSMENTS AND COLLECTIONS AFTER LIMITATION PERIOD.—Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

* * * * *

SECTION 2703 (a) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1610 OF THE ACT

ERRONEOUS PAYMENTS

IN GENERAL. In the case of any overpayment * * * of the tax * * * the person making such overpayment * * * may take credit therefor against taxes due upon any * * * return * * *.

SECTION 1601 (a) (5) OF THE ACT

Refund of the tax (including penalty and interest collected with respect thereto, if any), based on any credit allowable under this section, may be made in accordance with the provisions of law applicable in the case of erroneous or illegal collection of the tax. No interest shall be allowed or paid on the amount of any such refund. (Sec. 1601 (a) (5), I.R.C., as added by sec. 609, Social Security Act Amendments of 1939.)

SECTION 3313 OF THE INTERNAL REVENUE CODE

PERIOD OF LIMITATION UPON REFUNDS AND CREDITS

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 wrongfully collected must * * * be presented to the Commissioner 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 THE UNITED STATES REVISED STATUTES

WHEN ASSIGNMENT OF CLAIMS VOID

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.

§ 403.602 *Refund or credit of overpayments; abatement of overassessments*—(a) *Who may make claims.* If more than the correct amount of tax, penalty, or interest is paid to the collector, the person who paid such tax, penalty, or interest to the collector may file a claim for refund of such overpayment or may file a claim for credit of such overpayment against the tax shown to be due on any return on Form 940 which he files. If more than the correct amount of tax, penalty, or interest is assessed but not paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment.

(b) *Form of claims.* Each claim for refund, credit, or abatement under this section shall be made on Form 843 in accordance with these regulations and the instructions relating to such form. Copies of Form 843 may be obtained from any collector. A separate claim on such form shall be made for each taxable year. All grounds in detail and all facts alleged in support of the claim must be clearly set forth under oath. The claim shall be filed with the collector for the district in which the tax was assessed or paid.

(c) *Limitations on claims.* 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.

(d) *Claims improperly made.* Any claim which does not comply with the requirements of this section will not be considered for any purpose as a claim for refund, credit, or abatement.

(e) *Proof of representative capacity.* If a return is made by an individual who thereafter dies and a refund claim is made 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 made. If an executor, administrator, guardian, trustee, receiver, or other fiduciary makes a return and thereafter a refund claim is made 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 made 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 made by a fiduciary other than the one by whom the return was made, 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.

(f) *Refunds under section 1601 (a) (5) of the Act.* The provisions of this section of these regulations shall apply in the case of claims for refund based upon credit allowable under section 1601 of the Act (see subpart D of these regulations).*

Interest and Additions to Tax

SECTION 1605 (b) OF THE ACT

ADDITION TO TAX IN CASE OF DELINQUENCY

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the date the tax became due until paid.

SECTION 3655 OF THE INTERNAL REVENUE CODE

NOTICE AND DEMAND FOR TAX

(a) DELIVERY. 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, 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.

(b) ADDITION TO TAX FOR NONPAYMENT. 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 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment * * *.

* * * * *

§ 403.603 *Interest.* If the tax is not paid to the collector when due, interest accrues at the rate of 6 percent per annum.*

§ 403.604 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent 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 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.*

SECTION 3612 (d) AND (e) OF THE INTERNAL REVENUE CODE

(d) ADDITIONS TO TAX.—(1) FAILURE TO FILE RETURN. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner 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 willful neglect, no such addition shall be made to the tax: *Provided*, That in the case of a failure to make and file a 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 August 30, 1935, 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.

(2) FRAUD. 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.

* * * * *

(e) COLLECTION OF ADDITIONS TO TAX. The amount added to any tax under paragraphs (1) and (2) of subsection (d) 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.

§ 403.605 *Additions to tax for delinquent or false returns*—(a) *Delinquent returns.* If a person fails to make and file a return within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(1) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(2) Those who file tardy returns and are unable to show reasonable cause for the delay.

A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) of the Internal Revenue Code is 50 percent of the total tax due for the entire period involved including any tax previously paid.*

Penalties

SECTION 2707 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1610 OF THIS ACT

PENALTIES

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax * * * 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 subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter 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 subchapter who willfully fails to pay such tax, make such returns, 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.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, 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 subchapter 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.

(d) 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 3616 OF THE INTERNAL REVENUE CODE

PENALTIES

Whenever any person—

(a) FALSE RETURNS. Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or,

(b) NEGLECT TO OBEY SUMMONS. Being duly summoned to appear to testify, or to appear and produce books as required under section 3615, neglects to appear or to produce said books—

he shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

* * * * *

SECTION 35 (A) OF THE CRIMINAL CODE, 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. (Sec. 35, Act of Mar. 4, 1909, 35 Stat. 1095, as amended by Act of April 4, 1938, 52 Stat. 197, 18 U.S.C., Sup. V, 80, 83.)

SECTION 3793 (b) OF THE INTERNAL REVENUE CODE

FRAUDULENT RETURNS, AFFIDAVITS, AND CLAIMS

(1) ASSISTANCE IN PREPARATION OR PRESENTATION. 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 wtih the costs of prosecution.

(2) PERSON DEFINED. The term "person" as used in this subsection 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 1107 OF THE SOCIAL SECURITY ACT, AS AMENDED

PENALTY FOR FRAUD

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of * * * the Federal Unemployment Tax Act, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual * * * falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both. (Sec. 1107, Social Security Act, as added by sec. 802, Social Security Act Amendments of 1939.)

Other Laws Applicable

SECTION 1610 OF THE ACT

OTHER LAWS APPLICABLE

All provisions of law (including penalties) applicable in respect of the taxes imposed by section 2700, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

Rules and Regulations

SECTION 1609 OF THE ACT

RULES AND REGULATIONS

* * * The Commissioner, with the approval of the Secretary, shall make and publish rules and regulations for the enforcement of this subchapter, except sections 1602 and 1603.

SECTION 3791 OF THE INTERNAL REVENUE CODE

RULES AND REGULATIONS

(a) AUTHORIZATION—(1) IN GENERAL. * * * the Commissioner with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title [Internal Revnue Code].

(2) IN CASE OF CHANGE IN LAW. The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) RETROACTIVITY OF REGULATIONS OR RULINGS. 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.

§ 403.606 *Promulgation of regulations.* In pursuance of section 1609 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.*

[SEAL] GUY T. HELVERING,
Commissioner.

Approved: September 12, 1940.

JOHN L. SULLIVAN,
Acting Secretary of the Treasury.

[F. R. Doc. 40-3866; Filed, September 13, 1940; 4:02 p. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER I—VETERANS' ADMINISTRATION

REVISION OF REGULATIONS RELATING TO APPORTIONMENT OF DEATH PENSION OR COMPENSATION

§ 5.2591 (a) *Laws under which apportionment may be made.* For the purposes of Public No. 2, 73d Congress; sections 28, 30 and 31, Public No. 141, 73d Congress; Act of May 1, 1926, as reenacted by section 30, Public No. 141; the General Law as reenacted by section 30, Title III, Public No. 141; the General Law as amended by section 314 of the Act of October 6, 1917, reenacted by section 30, Title III, Public No. 141; Public No. 484, 73d Congress, as amended; Public No. 304, 75th Congress; Public No. 196, 76th Congress, and Public No. 198, 76th Congress, death compensation or pension shall be apportioned where the child or children of a deceased person who served are not in the actual or constructive custody of the widow, except that no apportionment of death compensation or pension payable to the widow for herself and child or children will be made where the child or children are separated from the widow, due to her incompetency, and a fiduciary has been appointed for the widow who is providing properly for the children from her estate pursuant to a decree of a court of competent jurisdiction.

(b) *Effective dates of apportionment.* The effective date of the apportionment will be the first day of the month next succeeding that in which notice was received in the Veterans' Administration that the child or children are not in the actual or constructive care and custody of the widow: *Provided,* That where prior to the initial award to the widow the lack of custody in the widow is shown, the compensation or pension will be apportioned in accordance with the facts found for all periods affected.

(c) *Method of computing rates*—(1) *Computation of rates for widows and children.* The share for all children for whom claim is filed will be that amount to which they would be entitled if there were no widow. The widow's share will be the difference between the children's share and the total amount payable on account of the widow and all children for whom claim is filed. In all instances, the amount payable to or for the children will be divided equally among the children, regardless of their ages. The share for any children in the widow's custody will be added to the widow's share. If, in the application of this rule, the widow's share would be reduced to an amount lower than 50 per cent of that to which she would be entitled if there were no children, then her share will be 50 per cent of the amount to which she would be entitled if there were no children, and the difference between the amount of such widow's share and the entire amount payable for the widow and children will be the children's share.

(2) *Computation of rate for additional beneficiary.* In any case wherein death compensation or pension is being currently paid and claim is filed by or for an additional dependent of the veteran, who is entitled to an apportioned share, no reduction will be made in the current award for any period prior to the first of the month next succeeding that in which the changed award is approved. The amount payable during such period to or for the additional dependent will be the difference between the amount of compensation or pension currently being paid and the total amount payable by reason of including the additional dependent. On and after the first day of the month next succeeding that in which the changed award is approved the total amount of compensation or pension will be apportioned as provided in the preceding paragraph (c) (1).

(d) *Special apportionments.* In any case wherein it is clearly shown by competent evidence that the application of the foregoing provisions of these regulations will result in undue hardship upon the widow, children or dependent parents, and relief can be afforded without undue hardship to the other persons at