

[CHAPTER 757]

AN ACT

To provide revenue, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Second Revenue Act of 1940".

TITLE I—CORPORATION INCOME TAX

SEC. 101. CORPORATION INCOME TAX.

(a) **TAX ON CORPORATIONS IN GENERAL.**—Section 13 (b) of the Internal Revenue Code, as amended by section 3 of the Revenue Act of 1940, is amended to read as follows:

"(b) **IMPOSITION OF TAX.**—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation the normal-tax net income of which is more than \$25,000 (except a corporation subject to the tax imposed by section 14, section 231 (a), Supplement G, or Supplement Q) whichever of the following taxes is the lesser:

"(1) **GENERAL RULE.**—A tax of 22 $\frac{1}{10}$ per centum of the normal-tax net income; or

"(2) **ALTERNATIVE TAX (CORPORATIONS WITH NORMAL-TAX NET INCOME SLIGHTLY MORE THAN \$25,000).**—A tax of \$3,775, plus 35 per centum of the amount of the normal-tax net income in excess of \$25,000."

(b) **TAX ON FOREIGN CORPORATIONS.**—Section 14 (c) (1) of the Internal Revenue Code, as amended by section 3 of the Revenue Act of 1940, is amended to read as follows:

"(c) **FOREIGN CORPORATIONS.**—

"(1) In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the tax shall be an amount equal to 22 $\frac{1}{10}$ per centum of the normal-tax net income, regardless of the amount thereof."

(c) **TAX ON MUTUAL INVESTMENT COMPANIES.**—Section 362 (b) of the Internal Revenue Code, as amended by section 3 of the Revenue Act of 1940, is amended to read as follows:

"(b) **IMPOSITION OF TAX.**—There shall be levied, collected, and paid for each taxable year upon the Supplement Q net income of every mutual investment company a tax equal to 22 $\frac{1}{10}$ per centum of the amount thereof."

(d) **DEFENSE TAX FOR FIVE YEARS.**—The first sentence of section 15 of the Internal Revenue Code, added to such Code by section 201 of the Revenue Act of 1940, is amended to read as follows: "In the case of any taxpayer, the amount of tax under this chapter for any taxable year beginning after December 31, 1939, and before January 1, 1945, shall be the tax computed without regard to this section, increased by 10 per centum; except that in the case of a corporation the increase shall be limited to 10 per centum of the tax computed without regard to the amendments made by section 101 (a), (b), and (c) of the Second Revenue Act of 1940."

(e) **TAXABLE YEARS TO WHICH APPLICABLE.**—Amendments made by this section shall be applicable only with respect to taxable years beginning after December 31, 1939.

October 8, 1940
[H. R. 10413]

[Public, No. 801]

Second Revenue Act
of 1940.

Corporations in general.
53 Stat. 7, 863.
26 U. S. C., Supp.
V, § 13 (b).
Ante, p. 517.

53 Stat. 8, 78, 71, 98.
26 U. S. C., Supp.
V, §§ 14, 231 (a), 201-
208, 361-362.

Foreign corporations.
53 Stat. 8, 864.
26 U. S. C., Supp.
V, § 14 (e), § 14 (note).
Ante, p. 518.

Mutual investment
companies.
53 Stat. 99, 866.
26 U. S. C., Supp.
V, § 362 (b).
Ante, p. 518.

Defense tax.
53 Stat. 9.
26 U. S. C., Supp.
V, § 15.
Ante, p. 520.

Supra.

Taxable years to
which applicable.

TITLE II—EXCESS PROFITS TAX

SEC. 201. EXCESS PROFITS TAX OF 1940.

The Internal Revenue Code is amended by inserting after section 706 the following new subchapter which may be cited as the "Excess Profits Tax Act of 1940":

Excess Profits Tax Act of 1940.
53 Stat. 117.
26 U. S. C., Supp. V.

"SUBCHAPTER E—EXCESS PROFITS TAX

"Part I

"SEC. 710. IMPOSITION OF TAX.

"(a) IMPOSITION.—There shall be levied, collected, and paid, for each taxable year beginning after December 31, 1939, on the adjusted excess profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) a tax as follows:

Adjusted excess profits net income.

Post, p. 988.

Rates.

"(1) Upon adjusted excess profits net incomes of less than \$20,000, 25 per centum of the adjusted excess profits net income.

"\$5,000 upon adjusted excess profits net incomes of \$20,000; and upon adjusted excess profits net incomes in excess of \$20,000, and not in excess of \$50,000, 30 per centum in addition of such excess.

"\$14,000 upon adjusted excess profits net incomes of \$50,000; and upon adjusted excess profits net incomes in excess of \$50,000, and not in excess of \$100,000, 35 per centum in addition of such excess.

"\$31,500 upon adjusted excess profits net incomes of \$100,000; and upon adjusted excess profits net incomes in excess of \$100,000, and not in excess of \$250,000, 40 per centum in addition of such excess.

"\$91,500 upon adjusted excess profits net incomes of \$250,000; and upon adjusted excess profits net incomes in excess of \$250,000, and not in excess of \$500,000, 45 per centum in addition of such excess.

"\$204,000 upon adjusted excess profits net incomes of \$500,000; and upon adjusted excess profits net incomes in excess of \$500,000, 50 per centum in addition of such excess.

"(2) APPLICATION OF RATES IN CASE OF CERTAIN EXCHANGES.—If the taxpayer's highest bracket amount for the taxable year computed under section 752 (relating to certain exchanges) is less than \$500,000, then in the application of paragraph (1) of this subsection to such taxpayer, in lieu of each amount, other than the percentages, specified in such paragraph, there shall be substituted an amount which bears the same ratio to the amount so specified as the highest bracket amount so computed bears to \$500,000.

Application of rates in case of certain exchanges.
Post, p. 995.

"(b) DEFINITION OF ADJUSTED EXCESS PROFITS NET INCOME.—As used in this section, the term 'adjusted excess profits net income' in the case of any taxable year means the excess profits net income (as defined in section 711) minus the sum of:

"Adjusted excess profits net income" defined.

Post, p. 976.

"(1) SPECIFIC EXEMPTION.—A specific exemption of \$5,000;

"(2) EXCESS PROFITS CREDIT.—The amount of the excess profits credit allowed under section 712; and

Post, p. 979.

"(3) UNUSED EXCESS PROFITS CREDIT.—In the case of a taxpayer the normal-tax net income of which for the taxable year is not

more than \$25,000, the amount by which the excess profits credit for the preceding taxable year (if beginning after December 31, 1939) exceeds the excess profits net income for such preceding taxable year.

“SEC. 711. EXCESS PROFITS NET INCOME.

Taxable years after Dec. 31, 1939.

53 Stat. 7.
26 U. S. C., Supp. V, § 13 (note).

Post, p. 980.

Income taxes.

53 Stat. 35.
26 U. S. C., Supp. V, § 102.

Long-term gains and losses.

53 Stat. 14.
26 U. S. C., Supp. V, § 23 (D).

Income from retirement or discharge of bonds, etc.

Refunds and interest on Agricultural Adjustment Act taxes.
48 Stat. 31.
7 U. S. C., ch. 26; Supp. V, ch. 26.

Recoveries of bad debts.

Dividends received.

Post, p. 981.

Dividends received.

Interest.

Post, p. 984.

“(a) **TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1939.**—The excess profits net income for any taxable year beginning after December 31, 1939, shall be the normal-tax net income, as defined in section 13 (a) (2), for such year except that the following adjustments shall be made:

“(1) **EXCESS PROFITS CREDIT COMPUTED UNDER INCOME CREDIT.**—If the excess profits credit is computed under section 713, the adjustments shall be as follows:

“(A) **Income Taxes.**—The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) under Chapter 1 for such taxable year;

“(B) **Long-term Gains and Losses.**—There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (1) over the losses from the sale or exchange of such property;

“(C) **Income From Retirement or Discharge of Bonds, and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

“(D) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund;

“(E) **Recoveries of Bad Debts.**—There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940;

“(F) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

“(2) **EXCESS PROFITS CREDIT COMPUTED UNDER INVESTED CAPITAL CREDIT.**—If the excess profits credit is computed under section 714, the adjustments shall be as follows:

“(A) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to all dividends on stock of all corporations, except dividends (actual or constructive) on stock of foreign personal-holding companies;

“(B) **Interest.**—The deduction for interest shall be reduced by an amount equal to 50 per centum of so much of such interest as represents interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 719 (a));

“(C) **Income Taxes.**—The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) under Chapter 1 for such taxable year;

Income taxes.

53 Stat. 35.
26 U. S. C., Supp.
V, § 102.

“(D) **Long-term Gains and Losses.**—There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (1) over the losses from the sale or exchange of such property;

Long-term gains and losses.

53 Stat. 14.
26 U. S. C., Supp.
V, § 23 (1).

“(E) **Income From Retirement or Discharge of Bonds, and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

Income from retirement or discharge of bonds, etc.

“(F) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund;

Refunds and interest on Agricultural Adjustment Act taxes.
48 Stat. 31.
7 U. S. C., ch. 26;
Supp. V, ch. 26.

“(G) **Interest on Certain Government Obligations.**—The normal-tax net income shall be increased by an amount equal to the amount of the interest on obligations held during the taxable year which are described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income, if the taxpayer has so elected under section 720 (d); and

Interest on certain Government obligations.

53 Stat. 10.
26 U. S. C., Supp.
V, § 22 (b) (4).

“(H) **Recoveries of Bad Debts.**—There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940.

Post, p. 985.

Recoveries of bad debts.

Taxable year less than 12 months.

“(3) **TAXABLE YEAR LESS THAN TWELVE MONTHS.**—If the taxable year is a period of less than twelve months the excess profits net income shall be placed on an annual basis by multiplying the amount thereof by the number of days in the twelve months ending with the close of the taxable year and dividing by the number of days in the taxable year. The tax shall be such part of the tax computed on such annual basis as the number of days in the taxable year is of the number of days in the twelve months ending with the close of the taxable year.

“(b) **TAXABLE YEARS IN BASE PERIOD.**—

Taxable years in base period.

“(1) **GENERAL RULE AND ADJUSTMENTS.**—The excess profits net income for any taxable year subject to the Revenue Act of 1936 shall be the normal-tax net income, as defined in section 13 (a) of such Act; and for any other taxable year beginning after December 31, 1937, and before January 1, 1940, shall be the special-class net income, as defined in section 14 (a) of the applicable revenue law. In either case the following adjustments shall be made (for additional adjustments in case of certain reorganizations, see section 742 (e)):

General rule and adjustments.
49 Stat. 1655.
26 U. S. C., Supp.
V, § 13 (note).

53 Stat. 8.
26 U. S. C., Supp.
V, § 14 (a).

“(A) **Income Taxes.**—The deduction for taxes shall be increased by an amount equal to the tax (not including the tax under section 102) for such taxable year under Title I or Chapter 1, as the case may be, of the revenue law applicable to such year;

Post, p. 993.

Income taxes.

53 Stat. 35.
26 U. S. C., Supp.
V, § 102.

Long-term gains and losses.

“(B) Long-Term Gains and Losses.—There shall be excluded long-term capital gains and losses. There shall be excluded the excess of gains from the sale or exchange of property held for more than eighteen months which is of a character which is subject to the allowance for depreciation provided in section 23 (1) over the losses from the sale or exchange of such property;

53 Stat. 14.
26 U. S. C., Supp.
V, § 23 (f).

Income from retirement or discharge of bonds, etc.

“(C) Income From Retirement or Discharge of Bonds, and So Forth.—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

Deductions on account of retirement or discharge of bonds, etc.

“(D) Deductions on Account of Retirement or Discharge of Bonds, and So Forth.—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, the following deductions for such taxable year shall not be allowed:

53 Stat. 12.
26 U. S. C., Supp.
V, § 23 (a).

“(i) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

“(ii) The deduction for losses allowable by reason of such retirement or discharge; and

“(iii) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge;

Casualty, demolition, etc., losses.

53 Stat. 13.
26 U. S. C., Supp.
V, § 23 (f).

“(E) Casualty, Demolition, and Similar Losses.—Deductions under section 23 (f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise, shall not be allowed;

Repayment of processing tax to vendees.
53 Stat. 12.
26 U. S. C., Supp.
V, § 23 (a).

“(F) Repayment of Processing Tax to Vendees.—The deduction under section 23 (a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended, as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act collected from its vendees which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period;

48 Stat. 31.
7 U. S. C. ch. 26;
Supp. V, ch. 28.

“(G) Payment of Judgments, and So Forth.—Deductions attributable to any claim, award, judgment, or decree against the taxpayer, or interest on any of the foregoing, shall not be allowed if in the light of the taxpayer's business it was abnormal for the taxpayer to incur a liability of such character or, if the taxpayer normally incurred such liability, the amount of such liability in the taxable year was grossly disproportionate to the amount of such liability in the four previous taxable years;

Payment of judgments, etc.

“(H) All expenditures for intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, or expenditures for development costs in the case of mines, which the taxpayer has deducted from gross income as an expense, shall not be allowed to the extent that in the light of the taxpayer’s business it was abnormal for the taxpayer to incur a liability of such character or, if the taxpayer normally incurred such liability, to the extent that the amount of such liability in the taxable year was grossly disproportionate to the amount of such liability in the four previous taxable years; and

“(I) Dividends Received.—The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

“(2) CAPITAL GAINS AND LOSSES.—For the purposes of this subsection the normal-tax net income and the special-class net income referred to in paragraph (1) shall be computed as if section 23 (g) (2), section 23 (k) (2), and section 117 were part of the revenue law applicable to the taxable year the excess profits net income of which is being computed, with the exception that the net short-term capital loss carry-over provided in subsection (e) of section 117 shall be applicable to net short-term capital losses for taxable years beginning after December 31, 1934. Such exception shall not apply for the purposes of computing the tax under this subchapter for any taxable year beginning before January 1, 1941.

“SEC. 712. EXCESS PROFITS CREDIT—ALLOWANCE.

“(a) DOMESTIC CORPORATIONS.—In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall, at the election of the taxpayer made in its return for such taxable year, be an amount computed under section 713 or section 714. (For election in case of certain reorganizations of corporations not qualified under the preceding sentence, see section 741.) In the case of all other domestic corporations the excess profits credit for any taxable year shall be an amount computed under section 714. In the case of a domestic corporation which for any taxable year does not file a return before the expiration of the time prescribed by law for filing such return, the excess profits credit for such taxable year shall be an amount computed under section 714.

“(b) FOREIGN CORPORATIONS.—In the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, the first taxable year of which under this subchapter begins on any date in 1940, which was in existence on the day forty-eight months prior to such date and which at any time during each of the taxable years in such forty-eight months was engaged in trade or business within the United States or had an office or place of business therein, the excess profits credit for any taxable year shall, at the election of the taxpayer in its return for such taxable year, be an amount computed under section 713 or section 714. In the case of all other such foreign corporations the excess profits credit for any taxable year shall be an amount computed under section 714. In the case of a foreign corporation which for any taxable year does not file a return before the expiration of the time prescribed by law for filing such return, the excess profits credit for such taxable year shall be an amount computed under section 714.

Oil or gas wells,
etc.

Dividends received.

Capital gains and
losses.

53 Stat. 13, 50.
26 U. S. C., Supp.
V, §§ 23 (g) (2), (k)
(2), 117.

53 Stat. 52.
26 U. S. C., Supp.
V, § 117 (e).

Domestic corpora-
tions.

Post, pp. 980, 981.

Post, p. 992.

Failure to file re-
turn.

Foreign corpora-
tions.

Post, pp. 980, 981.

Failure to file re-
turn.

"SEC. 713. EXCESS PROFITS CREDIT—BASED ON INCOME.

Amount of excess profits credit.

"(a) **AMOUNT OF EXCESS PROFITS CREDIT.**—The excess profits credit for any taxable year, computed under this section, shall be—

Domestic corporations.

"(1) **DOMESTIC CORPORATIONS.**—In the case of a domestic corporation—

"(A) 95 per centum of the average base period net income, as defined in subsection (b),

"(B) Plus 8 per centum of the net capital addition as defined in subsection (c), or

"(C) Minus 6 per centum of the net capital reduction as defined in subsection (c).

Foreign corporations.

"(2) **FOREIGN CORPORATIONS.**—In the case of a foreign corporation, 95 per centum of the average base period net income.

Average base period net income.

"(b) **AVERAGE BASE PERIOD NET INCOME.**—For the purposes of this section the average base period net income of the taxpayer shall be determined as follows:

"(1) By computing the aggregate of the excess profits net income for each of the taxable years of the taxpayer beginning after December 31, 1935, and before January 1, 1940, reduced, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, by the amount attributable to such excess under paragraph (4);

"(2) By dividing the amount ascertained under paragraph (1) by the total number of months in all such taxable years; and

"(3) By multiplying the amount ascertained under paragraph (2) by twelve.

"(4) For the purposes of paragraph (1)—

"(A) In determining whether, for any taxable year, the deductions plus the credit for dividends received exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711 (b) (1) shall be made; and

"(B) The amount attributable to any taxable year in which there is such an excess shall be the amount of such excess, except that such amount shall be zero if there is only one such year, or, if more than one, shall be zero for the year in which such excess is the greatest.

"(5) For the purposes of paragraph (1), if the taxpayer was in existence during only part of the 48 months preceding the beginning of its first taxable year under this subchapter (hereinafter in this paragraph called 'base period'), its excess profits net income—

"(A) for each taxable year of twelve months (beginning with the beginning of such base period) during which it was not in existence, shall be an amount equal to 8 per centum of the excess of—

"(i) the daily invested capital for the first day of the taxpayer's first taxable year beginning after December 31, 1939, over

"(ii) an amount equal to the same percentage of such daily invested capital as is applicable under section 720 in reduction of the average invested capital of the preceding taxable year;

"(B) for the taxable year of less than twelve months consisting of that part of the remainder of the base period during which it was not in existence, shall be the amount ascertained for a full year under subparagraph (A), multiplied by the number of days in such taxable year of less than

Ante, p. 977.

Post, p. 985.

twelve months and divided by the number of days in the twelve months ending with the close of such taxable year.

“(6) In no case shall the average base period net income be less than zero.

“(7) For computation of average base period net income in case of certain reorganizations, see section 742.

Post, p. 992.

“(c) ADJUSTMENTS IN EXCESS PROFITS CREDIT ON ACCOUNT OF CAPITAL CHANGES.—For the purposes of this section—

Adjustments on account of capital changes.

“(1) The net capital addition for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital addition for each day of the taxable year over the aggregate of the daily capital reduction for each day of the taxable year.

Net capital addition.

“(2) The net capital reduction for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital reduction for each day of the taxable year over the aggregate of the daily capital addition for each day of the taxable year.

Net capital reduction.

“(3) The daily capital addition for any day of the taxable year shall be the aggregate of the amounts of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of the taxpayer’s first taxable year under this subchapter and prior to such day. In determining the amount of any property paid in, such property shall be included in an amount determined in the manner provided in section 718 (a) (2). A distribution by the taxpayer to its shareholders in its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital. The amount ascertained under this paragraph shall be reduced by the excess, if any, of the excluded capital for such day over the excluded capital for the first day of the taxpayer’s first taxable year under this subchapter. For the purposes of this paragraph the excluded capital for any day shall be an amount equal to the sum of the following:

Daily capital addition.

Post, p. 982.

“(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of obligations held by the taxpayer at the beginning of such day, which are described in section 22 (b) (4) (A), (B), or (C) any part of the interest from which is excludible from gross income or allowable as a credit against net income; and

53 Stat. 10.
26 U. S. C., Supp.
V, § 22 (b) (4) (A),
(B), (C).

“(B) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of stock of domestic corporations held by the taxpayer at the beginning of such day.

The daily capital addition shall in no case be less than zero. (For daily capital additions and reductions in case of certain reorganizations, see section 743.)

Minimum daily capital addition.

Post, p. 994.

“(4) The daily capital reduction for any day of the taxable year shall be the aggregate of the amounts of distributions to shareholders, not out of earnings and profits, after the beginning of the taxpayer’s first taxable year under this subchapter and prior to such day.

Daily capital reduction.

“SEC. 714. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

“The excess profits credit, for any taxable year, computed under this section, shall be an amount equal to 8 per centum of the taxpayer’s invested capital for the taxable year, determined under section 715.

Post, p. 982.

"SEC. 715. DEFINITION OF INVESTED CAPITAL.

"For the purposes of this subchapter the invested capital for any taxable year shall be the average invested capital for such year, determined under section 716, reduced by an amount computed under section 720 (relating to inadmissible assets). If the Commissioner finds that in any case the determination of invested capital, on a basis other than a daily basis, will produce an invested capital differing by not more than \$1,000 from an invested capital determined on a daily basis, he may, under regulations prescribed by him with the approval of the Secretary, provide for such determination on such other basis. (For computation of invested capital in case of foreign corporations and corporations entitled to the benefits of section 251, see section 724.)

Post, p. 985.

53 Stat. 79; *post*, p. 987.
26 U. S. C., Supp. V, § 251.

"SEC. 716. AVERAGE INVESTED CAPITAL.

"The average invested capital for any taxable year shall be the aggregate of the daily invested capital for each day of such taxable year, divided by the number of days in such taxable year.

"SEC. 717. DAILY INVESTED CAPITAL.

"The daily invested capital for any day of the taxable year shall be the sum of the equity invested capital for such day plus the borrowed invested capital for such day determined under section 719.

Post, p. 984.

"SEC. 718. EQUITY INVESTED CAPITAL.

Definition.

"(a) **DEFINITION.**—The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

Money paid in.

"(1) **MONEY PAID IN.**—Money previously paid in for stock, or as paid-in surplus, or as a contribution to capital;

Property paid in.

"(2) **PROPERTY PAID IN.**—Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange. If the property was disposed of before such taxable year, such basis shall be determined in the same manner as if the property were still held at the beginning of such taxable year. If such unadjusted basis is a substituted basis it shall be adjusted, with respect to the period before the property was paid in, in the manner provided in section 113 (b) (2);

53 Stat. 44.
26 U. S. C., Supp. V, § 113 (b) (2).

Distributions in stock.

"(3) **DISTRIBUTIONS IN STOCK.**—Distributions in stock—

"(A) Made prior to such taxable year to the extent to which they are considered distributions of earnings and profits; and

"(B) Previously made during such taxable year to the extent to which they are considered distributions of earnings and profits other than earnings and profits of such taxable year;

Earnings and profits.

"(4) **EARNINGS AND PROFITS AT BEGINNING OF YEAR.**—The accumulated earnings and profits as of the beginning of such taxable year; and

Gain on tax-free liquidation.

"(5) **INCREASE ON ACCOUNT OF GAIN ON TAX-FREE LIQUIDATION.**—In the case of the previous receipt of property (other than property described in the last sentence of section 113 (a) (15)) by the taxpayer in complete liquidation of another corporation under section 112 (b) (6), or the corresponding provision of a prior revenue law, an amount, with respect to each such liquidation,

53 Stat. 43.
26 U. S. C., Supp. V, § 113 (a) (15).
53 Stat. 38.
26 U. S. C., Supp. V, § 112 (b) (6).

equal to the amount by which the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received, exceeds the sum of:

“(A) The aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

“(B) The aggregate of the liabilities of such other corporation assumed by the taxpayer in connection with the receipt of such property, of the liabilities (not assumed by the taxpayer) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the taxpayer for such property so received.

“(b) REDUCTION IN EQUITY INVESTED CAPITAL.—The amount by which the equity invested capital for any day shall be reduced as provided in subsection (a) shall be the sum of the following amounts—

“(1) DISTRIBUTIONS IN PREVIOUS YEARS.—Distributions made prior to such taxable year which were not out of accumulated earnings and profits;

“(2) DISTRIBUTIONS DURING THE YEAR.—Distributions previously made during such taxable year which are not out of the earnings and profits of such taxable year;

“(3) EARNINGS AND PROFITS OF ANOTHER CORPORATION.—The earnings and profits of another corporation which previously at any time were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) to (e), both inclusive, or in the corresponding provision of a prior revenue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the hands of such other corporation, or would have been so determined if the property had been other than money; and

“(4) REDUCTION ON ACCOUNT OF LOSS ON TAX-FREE LIQUIDATION.—In the case of the previous receipt of property (other than property described in the last sentence of section 113 (a) (15)) by the taxpayer in complete liquidation of another corporation under section 112 (b) (6), or the corresponding provision of a prior revenue law, an amount, with respect to each such liquidation, equal to the amount by which the sum of—

“(A) The aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

“(B) The aggregate of the liabilities of such other corporation assumed by the taxpayer in connection with the receipt of such property, of the liabilities (not assumed by the taxpayer) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the taxpayer for such property so received,

exceeds the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received. The amount of the reduction under this paragraph shall not exceed the accumulated earnings and profits as of the beginning of such taxable year.

Reduction in equity invested capital.

Distributions in previous years.

Distributions during the year.

Earnings and profits of another corporation.

53 Stat. 37-39.
26 U. S. C., Supp. V, § 112 (b)-(e).

Loss on tax-free liquidation.

53 Stat. 43.
26 U. S. C., Supp. V, § 113 (a) (15).
53 Stat. 38.
26 U. S. C., Supp. V, § 112 (b) (6).

Limitation.

Rules for application of subsections (a) and (b).

Distributions to shareholders.

“(c) RULES FOR APPLICATION OF SUBSECTIONS (A) AND (B).—For the purposes of subsections (a) and (b)—

“(1) DISTRIBUTIONS TO SHAREHOLDERS.—The term ‘distribution’ means a distribution by a corporation to its shareholders, and the term ‘distribution in stock’ means a distribution by a corporation in its stock or rights to acquire its stock. To the extent that a distribution in stock is not considered a distribution of earnings and profits it shall not be considered a distribution. A distribution in stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital.

“(2) DISTRIBUTIONS IN FIRST SIXTY DAYS OF TAXABLE YEAR.—In the application of such subsections to any taxable year beginning after December 31, 1940, so much of the distributions (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year.

“(3) COMPUTATION OF EARNINGS AND PROFITS OF TAXABLE YEAR.—For the purposes of subsections (a) (3) (B) and (b) (2) in determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under this subchapter for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

“(4) STOCK IN CASE OF MERGER OR CONSOLIDATION.—If a corporation owns stock in another corporation, and—

“(A) such corporations are merged or consolidated in a statutory merger or consolidation, or

“(B) such corporations are parties to a transaction which results in the elimination of such stock in a manner similar to that resulting from a statutory merger or consolidation, then such stock shall not be considered as property paid in for stock of, or as paid-in surplus of, or as a contribution to capital of, the corporation resulting from the transaction referred to in subparagraph (A) or (B).

“(d) For special rules affecting computation of property paid in for stock in connection with certain exchanges and liquidations, see section 751 (a).

“(e) For determination of equity invested capital in special cases, see section 723.

“SEC. 719. BORROWED INVESTED CAPITAL.

“(a) BORROWED CAPITAL.—The borrowed capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following:

“(1) The amount of the outstanding indebtedness (not including interest, and not including indebtedness described in section 751 (b) relating to certain exchanges) of the taxpayer which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, or deed of trust, plus,

“(2) In the case of a taxpayer having a contract (made before the expiration of 30 days after the date of the enactment of the Second Revenue Act of 1940) with a foreign government to

Distributions in first 60 days of taxable year.

Computation of earnings, etc.
Ante, pp. 982, 983.

Stock in case of merger or consolidation.

Computation of property.

Post, p. 995.

Equity invested capital.

Post, p. 986.

Borrowed capital.

Outstanding indebtedness.

Post, p. 995.

Contracts with foreign governments.

Ante, p. 974; *post*, p. 1012.

furnish articles, materials, or supplies to such foreign government, if such contract provides for advance payment and for repayment by the vendor of any part of such advance payment upon cancellation of the contract by such foreign government, the amount which would be required to be so repaid if cancellation occurred at the beginning of such day, but no amount shall be considered as borrowed capital under this paragraph which has been includible in gross income.

“(b) **BORROWED INVESTED CAPITAL.**—The borrowed invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be an amount equal to 50 per centum of the borrowed capital for such day.

Borrowed invested capital.

“**SEC. 720. ADMISSIBLE AND INADMISSIBLE ASSETS.**

“(a) **DEFINITIONS.**—For the purposes of this subchapter—

Definitions.

“(1) The term ‘inadmissible assets’ means—

“Inadmissible assets.”

“(A) Stock in corporations except stock in a foreign personal-holding company; and

“(B) Except as provided in subsection (d), obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income.

Infra.
53 Stat. 10,
26 U. S. C., Supp.
V, § 22 (b) (4).

“(2) The term ‘admissible assets’ means all assets other than inadmissible assets.

“Admissible assets.”

“(b) **RATIO OF INADMISSIBLES TO TOTAL ASSETS.**—The amount by which the average invested capital for any taxable year shall be reduced as provided in section 715 shall be an amount which is the same percentage of such average invested capital as the percentage which the total of the inadmissible assets is of the total of admissible and inadmissible assets. For such purposes, the amount attributable to each asset held at any time during such taxable year shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) for each day of such taxable year so held and adding such daily amounts. The determination of such daily amounts shall be made under regulations prescribed by the Commissioner with the approval of the Secretary. The adjusted basis shall be the adjusted basis for determining loss upon sale or exchange as determined under section 113.

Ratio of inadmissibles to total assets.

Ante, p. 982.

“(c) **COMPUTATION IF SHORT-TERM CAPITAL GAIN.**—If during the taxable year there has been a short-term capital gain with respect to an inadmissible asset, then so much of the amount attributable to such inadmissible asset under subsection (b) as bears the same ratio thereto as such gain bears to the sum of such gain plus the dividends and interest on such asset for such year, shall, for the purpose of determining the ratio of inadmissible assets to the total of admissible and inadmissible assets, be added to the total of admissible assets and subtracted from the total of inadmissible assets.

53 Stat. 40,
26 U. S. C., Supp. V,
§ 113.

Computation if short-term capital gain.

“(d) **TREATMENT OF GOVERNMENT OBLIGATIONS AS ADMISSIBLE ASSETS.**—If the excess profits credit for any taxable year is computed under section 714, the taxpayer may in its return for such year elect to increase its normal-tax net income for such taxable year by an amount equal to the amount of the interest on all obligations held during the taxable year which are described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income. In such case, for the purposes of this section, the term ‘admissible assets’ includes such obligations, and the term ‘inadmissible assets’ does not include such obligations.

Government obligations as admissible assets.

Ante, p. 981.

53 Stat. 10,
26 U. S. C., Supp. V,
§ 22 (b) (4).

"SEC. 721. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

Abnormalities in income.

"If there is includible in the gross income of the taxpayer for any taxable year an item of income of any one or more of the following classes:

"(a) Arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

"(b) Constituting an amount payable under a contract the performance of which required more than 12 months; or

"(c) Resulting from exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending over a period of more than 12 months; or

"(d) Includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's accounting period or method of accounting; or

"(e) In the case of a lessor of real property, amounts included in gross income for the taxable year by reason of the termination of the lease; or

"(f) Dividends on stock of foreign corporations, except foreign personal holding companies;

and, in the light of the taxpayer's business, it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class, the item includible in the gross income of the taxable year is grossly disproportionate to the gross income of the same class in the four previous taxable years, then: (1) the amount of such item attributable to any previous taxable year or years shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary; (2) the amount of such item attributable to any future taxable year or years shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary and shall, for the purposes of this subchapter, be included in the gross income for the future year or years to which attributable; and (3) the tax under this subchapter for the taxable year (in which the whole of such item would, without regard to this section, be includible) shall not exceed the sum of:

"(A) The tax under this subchapter for such taxable year computed without the inclusion in gross income of the portion of such item which is attributable to any other taxable year, and

"(B) The aggregate of the increase in the tax under this subchapter which would have resulted for each previous taxable year to which any portion of such item is attributable, computed as if an amount equal to such portion had been included in gross income for such previous taxable year.

"SEC. 722. ADJUSTMENT OF ABNORMALITIES IN INCOME AND CAPITAL BY THE COMMISSIONER.

"For the purposes of this subchapter, the Commissioner shall also have authority to make such adjustments as may be necessary to adjust abnormalities affecting income or capital, and his decision shall be subject to review by the United States Board of Tax Appeals.

"SEC. 723. EQUITY INVESTED CAPITAL IN SPECIAL CASES.

"Where the Commissioner determines that the equity invested capital as of the beginning of the taxpayer's first taxable year under this subchapter cannot be determined in accordance with section 718, the equity invested capital as of the beginning of such year shall

Determination of equity invested capital.

be an amount equal to the sum of (a) the money plus (b) the aggregate of the adjusted basis of the assets of the taxpayer held by the taxpayer at such time, such sum being reduced by the indebtedness outstanding at such time. The amount of the money, assets, and indebtedness at such time shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary. In such case, the equity invested capital for each day after the beginning of the taxpayer's first taxable year under this subchapter shall be determined, in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, using as the basic figure the equity invested capital as so determined.

"SEC. 724. FOREIGN CORPORATIONS AND CORPORATIONS ENTITLED TO BENEFITS OF SECTION 251—INVESTED CAPITAL.

"Notwithstanding section 715, in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein, and in the case of a corporation entitled to the benefits of section 251, the invested capital for any taxable year shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, under which—

"(a) **GENERAL RULE.**—The daily invested capital for any day of the taxable year shall be the aggregate of the adjusted basis of each United States asset held by the taxpayer on the beginning of such day. In the application of section 720 in reduction of the average invested capital (determined on the basis of such daily invested capital), the terms 'admissible assets' and 'inadmissible assets' shall include only United States assets; or

"(b) **EXCEPTION.**—If the Commissioner determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets, the invested capital for the taxable year shall be an amount which is the same percentage of the aggregate of the adjusted basis of all assets held by the taxpayer as of the end of the last day of the taxable year which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

"(c) **DEFINITION OF UNITED STATES ASSET.**—As used in this subsection, the term 'United States asset' means an asset held by the taxpayer in the United States, determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary.

"SEC. 725. PERSONAL SERVICE CORPORATIONS.

"(a) **DEFINITION.**—As used in this subchapter, the term 'personal service corporation' means a corporation whose income is to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 per centum in value of each class of stock of the corporation, and in which capital is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists of gains, profits, or income derived from trading as a principal. For the purposes of this subsection, an individual shall be considered as owning, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them.

Determination of invested capital.
Ante, p. 982.

53 Stat. 79.
26 U. S. C., Supp. V,
§ 251.

General rule.

Ante, p. 985.

Exception.

"United States asset" defined.

Definition.

Election as to taxability.
53 Stat. 4.
26 U. S. C., Supp. V, ch. 1.

Post, p. 1005.

“(b) **ELECTION AS TO TAXABILITY.**—If a personal service corporation signifies, in its return under Chapter 1 for any taxable year, its desire not to be subject to the tax imposed under this subchapter for such taxable year, it shall be exempt from such tax for such year, and the provisions of Supplement S of Chapter 1 shall apply to the shareholders in such corporation who were such shareholders on the last day of such taxable year of the corporation.

“**SEC. 726. CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT, 1936.**

Tax provisions.

49 Stat. 1998.
46 U. S. C., Supp. V, § 1155 (b).

Ante, p. 975.

Computation.

“(a) If the United States Maritime Commission certifies to the Commissioner that the taxpayer has completed within the taxable year any contracts or subcontracts which are subject to the provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended, then the tax imposed by this subchapter for such taxable year shall be, in lieu of a tax computed under section 710, a tax computed under subsection (b) of this section, if, and only if, the tax computed under subsection (b) is less than the tax computed under section 710.

“(b) The tax computed under this subsection shall be the excess of—

“(1) A tentative tax computed under section 710 with the normal-tax net income increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to such contracts or subcontracts; over

“(2) The amount of such payments.

“**SEC. 727. EXEMPT CORPORATIONS.**

Exempt corporations.

53 Stat. 33.
26 U. S. C., Supp. V, § 101.

53 Stat. 92.
26 U. S. C., Supp. V, § 331.

53 Stat. 98.
26 U. S. C., Supp. V, § 361.
Ante, p. 789.

“The following corporations shall be exempt from the tax imposed by this subchapter:

“(a) Corporations exempt under section 101 from the tax imposed by Chapter 1.

“(b) Foreign personal-holding companies, as defined in section 331.

“(c) Mutual investment companies, as defined in section 361.

“(d) Investment companies which under the Investment Company Act of 1940 are registered as diversified companies at all times during the taxable year. For the purposes of this subsection, if a company is so registered before July 1, 1941, it shall be considered as so registered at all times prior to the date of such registration.

“(e) Personal-holding companies, as defined in section 501.

“(f) Foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein.

“(g) Domestic corporations satisfying the following conditions:

“(1) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and

“(2) If 50 per centum or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

“(h) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, in the gross income of which for any taxable year beginning after December 31, 1939, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less.

52 Stat. 967.
49 U. S. C., Supp. V, §§ 481-496.

“SEC. 728. MEANING OF TERMS USED.

“The terms used in this subchapter shall have the same meaning as when used in Chapter 1.

53 Stat. 4.
26 U. S. C., Supp.
V, ch. 1.

“SEC. 729. LAWS APPLICABLE.

“(a) **GENERAL RULE.**—All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter.

General rule.

“(b) **RETURNS.**—Notwithstanding subsection (a), no return under section 52 (a) shall be required to be filed by any taxpayer under this subchapter for any taxable year for which its excess profits net income, computed with the adjustments provided in section 711 (a) (2) and placed on an annual basis as provided in section 711 (a) (3), is not greater than \$5,000.

Returns.
53 Stat. 27.
26 U. S. C., Supp.
V, § 52 (a).

Ante, pp. 976, 977.

“(c) **FOREIGN TAXES PAID.**—In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

Foreign taxes paid.
53 Stat. 56.
26 U. S. C., Supp.
V, § 131.

53 Stat. 4.
26 U. S. C., Supp.
V, ch. 1.

“(d) **LIMITATIONS ON AMOUNT OF FOREIGN TAX CREDIT.**—The amount of the credit taken under this section shall be subject to each of the following limitations:

Limitations on amount of foreign tax credit.

“(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within such country bears to its entire excess profits net income for the same taxable year; and

“(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same taxable year.

“SEC. 730. CONSOLIDATED RETURNS.

“(a) **PRIVILEGE TO FILE CONSOLIDATED RETURNS.**—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

Affiliated group of corporations.

“(b) **REGULATIONS.**—The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the excess profits tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

Regulations.

Computation and payment of tax.

“(c) COMPUTATION AND PAYMENT OF TAX.—In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return. Only one specific exemption of \$5,000 provided in section 710 (b) (1) shall be allowed for the entire affiliated group of corporations.

Ante, p. 975.

Definition of “affiliated group.”

“(d) DEFINITION OF ‘AFFILIATED GROUP’.—As used in this section, an ‘affiliated group’ means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

“(1) At least 95 per centum of each class of the stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

“(2) The common parent corporation owns directly at least 95 per centum of each class of the stock of at least one of the other includible corporations.

“Stock.”

As used in this subsection, the term ‘stock’ does not include nonvoting stock which is limited and preferred as to dividends.

Definition of “includible corporation.”

“(e) DEFINITION OF ‘INCLUDIBLE CORPORATION’.—As used in this section, the term ‘includible corporation’ means any corporation except—

“(1) Corporations exempt from the tax imposed by this subchapter.

“(2) Foreign corporations.

“(3) Corporations organized under the China Trade Act, 1922.

“(4) Corporations entitled to the benefits of section 251, by reason of receiving a large percentage of their income from possessions of the United States.

“(5) Personal service corporations.

“(6) Insurance companies subject to taxation under section 201, 204, or 207.

42 Stat. 849.
15 U. S. C. §§ 141-162; Supp. V, §§ 142-160.

53 Stat. 79.
26 U. S. C., Supp. V, § 251.

53 Stat. 71, 72, 74.
26 U. S. C., Supp. V, §§ 201, 204, 207.

Includible insurance companies.

53 Stat. 4.
26 U. S. C., Supp. V, ch. 1.

Subsidiary formed to comply with foreign law.

“(f) INCLUDIBLE INSURANCE COMPANIES.—Despite the provisions of paragraph (6) of subsection (e), two or more domestic insurance companies each of which is subject to taxation under the same section of Chapter 1 shall be considered as includible corporations for the purpose of the application of subsection (d) to such insurance companies alone.

“(g) SUBSIDIARY FORMED TO COMPLY WITH FOREIGN LAW.—In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors’ qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this subchapter as a domestic corporation.

“(h) SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.—If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

Suspension of running of statute of limitations.

53 Stat. 82.
26 U. S. C., Supp. V, § 272 (a).

53 Stat. 87.
26 U. S. C., Supp. V, § 277.

“SEC. 731. CORPORATIONS ENGAGED IN MINING OF STRATEGIC METALS.

“In the case of any domestic corporation engaged in the mining of tungsten, quicksilver, manganese, platinum, antimony, chromite, or tin, the portion of the adjusted excess profits net income attributable

Tax exemptions.

to such mining in the United States shall be exempt from the tax imposed by this subchapter. The tax on the remaining portion of such adjusted excess profits net income shall be an amount which bears the same ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income.

“Part II—Rules in Connection With Certain Exchanges

“Supplement A—Excess Profits Credit Based on Income

“SEC. 740. DEFINITIONS.

“For the purposes of this Supplement—

“(a) **ACQUIRING CORPORATION.**—The term ‘acquiring corporation’ means—

“Acquiring corporation.”

“(1) A corporation which has acquired—

“(A) substantially all the properties of another corporation and the whole or a part of the consideration for the transfer of such properties is the transfer to such other corporation of all the stock of all classes (except qualifying shares) of the corporation which has acquired such properties, or

“(B) substantially all the properties of another corporation and the sole consideration for the transfer of such properties is the transfer to such other corporation of voting stock of the corporation which has acquired such properties, or

“(C) before October 1, 1940, properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock owned by such other corporation.

For the purposes of subparagraphs (B) and (C) in determining whether such voting stock or such paid-in surplus or contribution to capital is the sole consideration, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. Subparagraph (B) or (C) shall apply only if the corporation transferring such properties is forthwith completely liquidated in pursuance of the plan under which the acquisition is made, and the transaction of which the acquisition is a part has the effect of a statutory merger or consolidation.

“(2) A corporation which has acquired property from another corporation in a transaction with respect to which gain or loss was not recognized under section 112 (b) (6) of Chapter 1 or a corresponding provision of a prior revenue law;

53 Stat. 38.
26 U. S. C., Supp.
V, § 112 (b) (6).

“(3) A corporation the result of a statutory merger of two or more corporations; or

“(4) A corporation the result of a statutory consolidation of two or more corporations.

“(b) **COMPONENT CORPORATION.**—The term ‘component corporation’ means—

“Component corporation.”

“(1) In the case of a transaction described in subsection (a) (1), the corporation which transferred the assets;

“(2) In the case of a transaction described in subsection (a) (2), the corporation the property of which was acquired;

“(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger; or

“(4) In the case of a statutory consolidation, all corporations consolidated, except the corporation resulting from the consolidation.

“Qualified component corporation.”

“(c) QUALIFIED COMPONENT CORPORATION.—The term ‘qualified component corporation’ means a component corporation which was in existence on the date of the beginning of the taxpayer’s base period.

Base period.

“(d) BASE PERIOD.—In the case of a taxpayer which is an acquiring corporation the base period shall be:

“(1) If the tax is being computed for any taxable year beginning in 1940, the forty-eight months preceding the beginning of such taxable year; or

“(2) If the tax is being computed for any taxable year beginning after December 31, 1940, the forty-eight months preceding what would have been its first taxable year beginning in 1940 if it had had a taxable year beginning in 1940 on the date on which the taxable year for which the tax is being computed began.

Base period years.

“(e) BASE PERIOD YEARS.—In the case of a taxpayer which is an acquiring corporation its base period years shall be the four successive twelve-month periods beginning on the same date as the beginning of its base period.

Existence of acquiring corporation.

“(f) EXISTENCE OF ACQUIRING CORPORATION.—For the purposes of subsection (c) and section 741, if any component corporation was in existence on the date of the beginning of the taxpayer’s base period (either actually or by reason of this subsection), its acquiring corporation shall be considered to have been in existence on such date.

Component corporations of component corporations.

“(g) COMPONENT CORPORATIONS OF COMPONENT CORPORATIONS.—If a corporation is a component corporation of an acquiring corporation, under subsection (b) or under this subsection, it shall (except for the purposes of section 742 (d) (1) and (2) and section 743 (a)) also be a component corporation of the corporation of which such acquiring corporation is a component corporation.

Post, pp. 993, 994.

“SEC. 741. ELECTION OF INCOME CREDIT.

Ante, pp. 979, 980, 981.

“In addition to the corporations which under section 712 (a) may elect the excess profits credit computed under section 713 or the excess profits credit computed under section 714, a taxpayer which is an acquiring corporation which was in existence on the date of the beginning of its base period shall have such election.

“SEC. 742. AVERAGE BASE PERIOD NET INCOME.

Average base period net income.

“In the case of a taxpayer which is an acquiring corporation which was actually in existence on the date of the beginning of its base period, or which is entitled under section 741 to elect the excess profits credit computed under section 713, its average base period net income (for the purpose of the credit computed under section 713) shall be computed as follows, in lieu of the method provided in section 713:

Ante, p. 980.

Computation.

“(a) By ascertaining with respect to each of its base period years—

“(1) The amount of its excess profits net income for each of its taxable years beginning after December 31, 1935, and ending with or within such base period year; or, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, the amount of such excess;

“(2) With respect to each of its qualified component corporations, the amount of its excess profits net income for each of its taxable years beginning after December 31, 1935, and ending with or within such base period year of the taxpayer; or, in the case of each such taxable year in which the deductions plus the credit for dividends received exceeded the gross income, the amount of such excess;

“(3) (A) The aggregate of the amounts of excess profits net income ascertained under paragraphs (1) and (2); (B) the aggregate of the excesses ascertained under paragraphs (1) and (2); and (C) the difference between the aggregates found under clause (A) and clause (B). If the aggregate ascertained under clause (A) is greater than the aggregate found under clause (B), the difference shall for the purposes of subsection (b) be designated a ‘plus amount’, and if the aggregate ascertained under clause (B) is greater than the aggregate found under clause (A), the difference shall for the purposes of subsection (b) be designated a ‘minus amount’.

“Plus amount.”

“Minus amount.”

“(b) By adding the plus amounts ascertained under subsection (a) (3) for each year of the base period; and by subtracting from such sum, if for two or more years of the base period there was a minus amount, the sum of such minus amounts, excluding the greatest.

“(c) By dividing the amount ascertained under subsection (b) by four.

“(d) In no case shall the average base period net income be less than zero. In the case of a taxpayer which becomes an acquiring corporation in any taxable year beginning after December 31, 1939, if, on September 11, 1940, and at all times until the taxpayer became an acquiring corporation—

Minimum average base period net income.

“(1) the taxpayer owned not less than 75 per centum of each class of stock of each of the qualified component corporations involved in the transaction in which the taxpayer became an acquiring corporation; or

“(2) one of the qualified component corporations involved in the transaction owned not less than 75 per centum of each class of stock of the taxpayer, and of each of the other qualified component corporations involved in the transaction,

the average base period net income of the taxpayer shall not be less than (A) the average base period net income of that one of its qualified component corporations involved in the transaction the average base period net income of which is greatest, or (B) the average base period net income of the taxpayer computed without regard to the base period net income of any of its qualified component corporations involved in the transaction.

“(e) For the purposes of subsection (a) (1) and (2) of this section—

Ante, p. 992.

“(1) There shall be excluded, in the various computations, any dividends paid by the taxpayer or any of its qualified component corporations during any of the taxable years of the payor which are included in the computation of the taxpayer's average base period net income. If the payor corporation is a corporation described in subsection (f) (1) or (2) of this section, the dividends to be excluded under this paragraph shall be only such as are paid after such payor corporation first became an acquiring corporation; and

Exclusion of certain dividends.

“(2) In determining whether, for any taxable year, the deductions plus the credit for dividends received exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711 (b) (1) shall be made.

Ante, p. 977.

“(f) (1) In the case of a taxpayer which is an acquiring corporation and which was not actually in existence on the date of the beginning of its base period, there shall be excluded from the various computations under subsection (a) (1) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to any period before it first became an acquiring corporation.

Income before becoming an acquiring corporation.

Exclusions in case of certain component corporations.
Ante, p. 992.

"(2) In the case of a component corporation which became a qualified component corporation only by reason of section 740 (f), there shall be excluded from the various computations under subsection (a) (2) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to any period before it first became an acquiring corporation.

Qualified component corporations.

"(3) In the case of a qualified component corporation which was actually in existence on the date of the beginning of the taxpayer's base period, there shall be excluded from the various computations under subsection (a) (2) of this section the portion of its excess profits net income, or of the excess over gross income therein referred to, which is attributable to the period before such date.

Acquisitions during taxable year.

"(4) If during the taxable year for which tax is computed under this subchapter the taxpayer acquires assets in a transaction which constitutes it an acquiring corporation, the amount includible under subsection (a) (2), attributable to such transaction, shall be limited to an amount which bears the same ratio to the amount computed without regard to this paragraph as the number of days in the taxable year after such transaction bears to the total number of days in such taxable year.

"SEC. 743. NET CAPITAL CHANGES.

Ante, p. 981.

"(a) For the purposes of section 713 (c), upon the date of the transaction which constitutes a corporation an acquiring corporation, there shall be added to its daily capital addition or reduction for such day, the net capital addition or reduction, as the case may be, of each of the component corporations involved in such transaction, but no other capital addition or reduction shall be considered as having been made by reason of such transaction.

"(b) For the purposes of this section—

"(1) In computing the net capital addition of each such component corporation there shall be disregarded property paid in to such corporation by the taxpayer or by any of its component corporations.

"(2) In computing the net capital reduction of each such component corporation there shall be disregarded distributions made to the taxpayer or to any of such component corporations.

"SEC. 744. FOREIGN CORPORATIONS.

Use of term "corporation."

"The term 'corporation' as used in this Supplement does not include a foreign corporation.

"Supplement B—Highest Bracket Amount and Invested Capital

"SEC. 750. DEFINITIONS.

"As used in this Supplement—

"Exchange."
53 Stat. 37.
26 U. S. C., Supp. V, § 112 (b) (4), (5).
53 Stat. 39.
26 U. S. C., Supp. V, § 112 (c), (d), (e).

"(a) EXCHANGE.—The term 'exchange' means an exchange, to which section 112 (b) (4) or (5) or so much of section 112 (c), (d), or (e) as refers to section 112 (b) (4) or (5), or to which a corresponding provision of a prior revenue law, is or was applicable, by one corporation of its property wholly or in part for stock or securities of another corporation, or a transfer of property by one corporation to another corporation after December 31, 1917, the basis of which in the hands of such other corporation is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

53 Stat. 42.
26 U. S. C., Supp. V, § 113 (a) (8) (B).

“(b) **TRANSFEROR UPON AN EXCHANGE.**—The term ‘transferor upon an exchange’ means a corporation which upon an exchange transfers property to another corporation in exchange, wholly or in part, for stock or securities of such other corporation, or transfers property to another corporation after December 31, 1917, the basis of which in the hands of such other corporation is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

“Transferor upon an exchange.”

53 Stat. 42.
26 U. S. C., Supp.
V, § 113 (a) (8) (B).

“Transferee upon an exchange.”

“(c) **TRANSFEEE UPON AN EXCHANGE.**—The term ‘transferee upon an exchange’ means a corporation which upon an exchange acquires property from another corporation in exchange, wholly or in part, for its stock or securities, or which acquires property from another corporation after December 31, 1917, the basis of which in its hands is or was determined under section 113 (a) (8) (B), or would have been so determined had such section been in effect.

53 Stat. 42.
26 U. S. C., Supp.
V, § 113 (a) (8) (B).

“Control.”

“(d) **CONTROL.**—The term ‘control’ means the ownership of stock possessing at least 90 per centum of the total combined voting power of all classes of stock entitled to vote and at least 90 per centum of the total value of shares of all classes of stock of the corporation.

“(e) **HIGHEST BRACKET AMOUNT.**—The term ‘highest bracket amount’ means \$500,000 or the highest bracket amount computed under section 752, whichever is the smaller.

“Highest bracket amount.”

“SEC. 751. DETERMINATION OF PROPERTY PAID IN FOR STOCK AND OF BORROWED CAPITAL IN CONNECTION WITH CERTAIN EXCHANGES.

“(a) **PROPERTY PAID IN FOR STOCK.**—In the application of section 718 (a) to a transferee upon an exchange in determining the amount paid in for stock of the transferee, or as paid-in surplus or as a contribution to capital of the transferee, in connection with such exchange, only an amount shall be deemed to have been so paid in equal to the excess of the basis in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

Property paid in for stock.
Ante, p. 982.

“(1) Any liability of the transferor assumed upon such exchange and any liability subject to which the property was received upon such exchange, plus

“(2) The aggregate of the amount of money and the fair market value of any other property transferred to the transferor not permitted to be received by such transferor without the recognition of gain.

“(b) **BORROWED CAPITAL.**—In the application of section 719 (a) to a transferee upon an exchange, the term ‘borrowed capital’ shall not include indebtedness originally evidenced by securities issued by the transferee upon such exchange as consideration for the property of the transferor received by the transferee upon such exchange if (1) such securities were property permitted to be received by the person to whom such securities were issued without the recognition of gain and (2) the indebtedness originally evidenced by such securities did not arise out of indebtedness of the transferor (other than indebtedness which in the transferor’s hands was subject to the limitations of this subsection) assumed by the transferee in connection with such exchange.

Borrowed capital.
Ante, p. 984.

“SEC. 752. COMPUTATION OF HIGHEST BRACKET AMOUNT IN CONNECTION WITH EXCHANGES.

“(a) **SPECIAL APPLICATION OF DAILY INVESTED CAPITAL OF TRANSFEROR UPON EXCHANGE.**—For the purposes of this section, the daily invested capital of a transferor upon an exchange for the day after

Daily invested capital of transferor.

Ante, p. 982.

the exchange shall be the daily invested capital determined under section 717 reduced by an amount equal to the amount by which the equity invested capital of the transferee upon such exchange was increased by reason of the receipt of property from such transferor upon such exchange.

“(b) HIGHEST BRACKET AMOUNT OF TRANSFEROR.—

Highest bracket amount of transferor. Taxable year of exchange.

“(1) TAXABLE YEAR OF EXCHANGE.—In the case of a transferor upon an exchange after the beginning of its first taxable year under this subchapter, its highest bracket amount for the taxable year in which the exchange takes place shall be the sum of—

“(A) Its highest bracket amount immediately preceding the exchange multiplied by the number of days in the taxable year up to and including the day of the exchange, plus

“(B) Its highest bracket amount for the taxable year after the exchange, multiplied by the number of days in the taxable year remaining after the day of the exchange,

divided by the number of days in the taxable year.

Taxable years after exchange involving control.

“(2) TAXABLE YEARS AFTER EXCHANGE INVOLVING CONTROL.—In the case of a transferor upon an exchange after the beginning of its first taxable year under this subchapter, if immediately after the exchange the transferor or its shareholders, or both, are in control of the transferee, the transferor's highest bracket amount for any taxable year after the taxable year in which the exchange takes place shall be an amount which is a percentage of its highest bracket amount immediately preceding the exchange equal to the percentage which its daily invested capital for the day after the exchange is of its daily invested capital for the day of the exchange.

Not involving control.

“(3) TAXABLE YEARS AFTER EXCHANGE NOT INVOLVING CONTROL.—In the case of a transferor upon an exchange (other than a transferor described in paragraph (4) of this subsection) after the beginning of its first taxable year under this subchapter, if immediately after the exchange no transferor or its shareholders, or both, upon the exchange are in control of the transferee, and if the shareholders of the transferee immediately preceding the exchange are not in control of the transferee immediately after the exchange, the transferor's highest bracket amount for any taxable year after the exchange shall be the excess, if any, of the sum of the transferor's highest bracket amount immediately preceding the exchange and the transferee's highest bracket amount immediately preceding the exchange, over \$500,000.

Taxable years after certain exchanges, etc. 53 Stat. 37. 26 U. S. C., Supp. V, § 112 (b) (5).

“(4) TAXABLE YEARS AFTER CERTAIN EXCHANGES UNDER SECTION 112 (b) (5).—In the case of an exchange after the beginning of the first taxable year under this subchapter of any transferor or transferee upon such exchange, involving two or more transferors, or one or more transferors and one or more other persons, if immediately after the exchange no one of such transferors, or its shareholders, or both, and no one or more of such other persons are in control of the transferee and if such exchange is an exchange described in section 112 (b) (5) or so much of section 112 (c) or 112 (e) as refers to section 112 (b) (5), the highest bracket amount of any such transferor for any taxable year after the exchange shall be an amount equal to its highest bracket amount immediately preceding the exchange—

53 Stat. 39. 26 U. S. C., Supp. V, § 112 (c), (e).

“(A) Minus an amount which bears the same ratio to its highest bracket amount immediately preceding the exchange as the excess of its daily invested capital for the day of the exchange over its daily invested capital for the day after the exchange bears to its daily invested capital for the day of the exchange, and

“(B) Plus an amount which bears the same ratio to the excess over \$500,000 of the sum of the amounts computed under subparagraph (A) with respect to each transferor, as the amount computed under subparagraph (A) with respect to such transferor bears to the sum of the amounts computed under such subparagraph with respect to each transferor.

“(c) HIGHEST BRACKET AMOUNT OF TRANSFEREE.—

“(1) TAXABLE YEAR OF EXCHANGE INVOLVING CONTROL.—In the case of a transferee upon an exchange after the beginning of the first taxable year under this subchapter of a transferor upon such exchange the transferee's highest bracket amount for the taxable year in which the exchange takes place shall be the sum of—

Highest bracket amount of transferee. Taxable year of exchange involving control.

“(A) Its highest bracket amount immediately preceding the exchange multiplied by the number of days in the taxable year up to and including the day of the exchange, plus

“(B) Its highest bracket amount for the taxable year after the exchange multiplied by the number of days in the taxable year remaining after the day of the exchange,

divided by the number of days in the taxable year. For the purposes of this paragraph and subsection (d) of this section ‘exchange’ includes a liquidation described in paragraph (5) of this subsection, and such exchange shall be deemed to have taken place on the day such liquidation was completed.

“(2) TAXABLE YEARS AFTER EXCHANGE INVOLVING CONTROL.—In the case of a transferee upon an exchange after the beginning of the first taxable year under this subchapter of a transferor upon such exchange, if immediately after the exchange any transferor upon such exchange or its shareholders, or both, are in control of the transferee, the transferee's highest bracket amount for any taxable year after the exchange shall be an amount which is a percentage of such transferor's highest bracket amount immediately preceding the exchange equal to the percentage which the excess of the transferee's daily invested capital for the day after the exchange over its daily invested capital for the day of the exchange is of such transferor's daily invested capital for the day of the exchange.

Taxable years after exchange involving control.

“(3) TAXABLE YEARS AFTER EXCHANGE NOT INVOLVING CONTROL.—In the case of a transferee upon an exchange (other than a transferee described in paragraph (4) of this subsection) after the beginning of the first taxable year under this subchapter of a transferor upon such exchange, if immediately after the exchange no transferor or its shareholders, or both, are in control of the transferee, and if the shareholders of the transferee immediately preceding the exchange are not in control of the transferee immediately after the exchange, the transferee's highest bracket amount for any taxable year after the exchange shall be an amount equal to (A) the sum of the transferor's highest bracket amount immediately preceding the exchange and the transferee's highest bracket amount immediately preceding the exchange, or (B) \$500,000, whichever is the smaller.

Not involving control.

“(4) TAXABLE YEARS AFTER CERTAIN EXCHANGES UNDER SECTION 112 (b) (5).—In the case of an exchange described in subsection (b) (4) of this section, the highest bracket amount of the transferee upon such exchange for any taxable year after the exchange shall be an amount equal (A) to the sum of the amounts computed under subparagraph (A) of such subsection with respect to each transferor or (B) \$500,000, whichever is the smaller.

Taxable years after certain exchanges, etc. 53 Stat. 37. 26 U. S. C., Supp. V, § 112 (b) (5).

Taxable years after liquidation, etc.
53 Stat. 38.
26 U. S. C., Supp.
V, § 112 (b) (6).

“(5) TAXABLE YEARS AFTER LIQUIDATION IN CASE OF CORPORATION RECEIVING PROPERTY UNDER SECTION 112 (b) (6).—Upon the receipt by a corporation during any taxable year under this subchapter of property in complete liquidation of another corporation, gain or loss upon which is not recognized by reason of section 112 (b) (6), the highest bracket amount of the corporation receiving such property for any taxable year after the liquidation is completed shall be an amount equal to its highest bracket amount immediately preceding the completion of the liquidation increased, but in no case to an amount above \$500,000, by an amount equal to the highest bracket amount of such other corporation immediately preceding the completion of such liquidation, if previously and after the beginning of the first taxable year under this subchapter of the corporation receiving such property such corporation was a transferor upon an exchange with respect to which such other corporation was a transferee.

Two or more exchanges in same taxable year.

“(d) HIGHEST BRACKET AMOUNT IN CASE OF TWO OR MORE EXCHANGES IN SAME TAXABLE YEAR.—

Ante, p. 996.

“(1) If a transferor upon an exchange is in the same taxable year involved in more than one exchange (either as transferor or transferee), its highest bracket amount for such taxable year shall be the amount determined under subsection (b) (1) with respect to the last exchange in such taxable year. Its highest bracket amount immediately preceding any exchange in such taxable year subsequent to the first exchange therein shall be the amount computed under subsection (b) (1) with respect to the immediately preceding exchange as if the taxable year closed on the day of such subsequent exchange.

Ante, p. 997.

“(2) If a transferee upon an exchange is in the same taxable year involved in more than one exchange (either as transferee or transferor), its highest bracket amount for such taxable year shall be the amount determined under subsection (c) (1) with respect to the last exchange in such taxable year. Its highest bracket amount immediately preceding any exchange in such taxable year subsequent to the first exchange therein shall be the amount computed under subsection (c) (1) with respect to the immediately preceding exchange as if the taxable year closed on the day of such subsequent exchange.

“(3) If a transferor or transferee upon an exchange is in the same taxable year involved in more than one exchange (either as transferor or transferee), its highest bracket amount for any taxable year after the taxable year in which such exchanges took place shall be the amount computed under subsection (b) (2), (3), or (4), or (c) (2), (3), (4), or (5), as the case may be, with respect to the last such exchange.”

TITLE III—AMORTIZATION DEDUCTION

SEC. 301. ALLOWANCE OF AMORTIZATION DEDUCTION.

53 Stat. 16, 867.
26 U. S. C., Supp.
V, § 23.

Section 23 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsection:

“(t) AMORTIZATION DEDUCTION.—The deduction for amortization provided in section 124.”

Post, p. 999.

SEC. 302. COMPUTATION OF AMORTIZATION DEDUCTION.

53 Stat. 879.
26 U. S. C., Supp.
V, § 123.

The Internal Revenue Code is amended by inserting after section 123 the following new section:

"SEC. 124. AMORTIZATION DEDUCTION.

"(a) **GENERAL RULE.**—Every corporation, at its election, shall be entitled to a deduction with respect to the amortization of the adjusted basis of any emergency facility (as defined in subsection (e)), based on a period of sixty months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the adjusted basis of the facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such adjusted basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction above provided with respect to any month shall, except to the extent provided in subsection (g) of this section, be in lieu of the deduction with respect to such facility for such month provided by section 23 (1), relating to exhaustion, wear and tear, and obsolescence. The sixty-month period shall begin as to any emergency facility, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired, or with the succeeding taxable year.

"(b) **ELECTION OF AMORTIZATION.**—The election of the taxpayer to take the amortization deduction and to begin the sixty-month period with the month following the month in which the facility was completed or acquired shall (except as provided in subsection (d) (3)) be made only by a statement to that effect in its return for the taxable year in which the facility was completed or acquired. Its election to take the amortization deduction and to begin such period with the taxable year succeeding such year shall be made only by a statement to that effect in its return for such succeeding taxable year.

"(c) **TERMINATION OF AMORTIZATION DEDUCTION.**—A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deductions with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Commissioner before the beginning of such month. The deduction provided under section 23 (1) shall be allowed, beginning with the first month as to which the amortization deduction is not applicable, and the taxpayer shall not (except as provided in subsection (d)) be entitled to any further amortization deductions with respect to such emergency facility.

"(d) **TERMINATION OF AMORTIZATION PERIOD.**—

"(1) If the President has proclaimed the ending of the emergency period (as defined in subsection (e)), or if the Secretary of War or the Secretary of the Navy has, in accordance with regulations prescribed by the President, certified to the Commissioner that an emergency facility ceased, on the date specified in the certificate, to be necessary in the interest of national defense during the emergency period, and if the date of such proclamation or the date specified in such certificate occurs within sixty months from the beginning of the amortization period with respect to such emergency facility, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period.

Emergency facilities.

General rule.

Post, p. 1001.

53 Stat. 14,
26 U. S. C., Supp.
V, § 23 (f).

Election of amortization.

Post, p. 1000.

Termination of amortization deduction.

53 Stat. 14,
26 U. S. C., Supp.
V, § 23 (f).

End of emergency period or cessation of emergency facility.
Post, p. 1001.

Election by taxpayer.

Date of proclamation, etc., effect.

53 Stat. 14.
26 U. S. C., Supp.
V, § 23 (1).
Election by taxpayer.

Nonelection of amortization deduction.

Election by taxpayer.

Manner, form, etc., of election.

Computation of taxes.

Recomputation of tax, etc.

Compromises.
53 Stat. 462.
26 U. S. C., Supp.
V, § 3761.

Limitation of adjustment.

“(2) If the date of the proclamation or the date specified in the certificate referred to in paragraph (1) of this subsection occurs within sixty months from the beginning of the amortization period with respect to such emergency facility and after the beginning of the month which the taxpayer has previously fixed under subsection (c) for the taking, in lieu of the amortization deduction provided in this section, of the deduction allowed by section 23 (1), the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period, and the termination of the amortization deduction under subsection (c) shall be disregarded.

“(3) In the case of a taxpayer which has not in either of its returns specified in subsection (b) elected to take an amortization deduction with respect to an emergency facility, if the date of the proclamation or the date specified in the certificate, referred to in paragraph (1) of this subsection, whichever is earlier, is before the expiration of sixty months from the last day of the month in which such emergency facility was completed or acquired, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) the amortization deduction provided in subsection (a), using an amortization period beginning with the month following the month in which the emergency facility was completed or acquired and ending as of the end of the month within which such proclamation was issued or within which occurred the date specified in such certificate, whichever is the earlier.

“(4) The election provided in paragraph (1), (2), or (3) shall be made by filing with the Commissioner, in such manner, in such form, and within such time, as the Commissioner with the approval of the Secretary may by regulations prescribe, a statement of such election. When such election has been so made, then, under regulations prescribed by the Commissioner with the approval of the Secretary, the taxes for all taxable years, beginning with the taxable year in which the amortization period began, shall be computed in accordance with an amortization deduction computed in accordance with the method provided in subsection (a), but using (in lieu of the sixty-month period provided in such subsection) the amortization period specified in paragraph (1), (2), or (3), as the case may be.

“(5) RECOMPUTATION OF TAX IN CASE OF ELECTION UNDER THIS SUBSECTION.—If the adjustment of the income or excess-profits tax liability for any taxable year necessary to give effect to paragraph (4) of this subsection is prevented (A) on the date of the certificate of the Secretary of War or the Secretary of the Navy or on the date of the President's proclamation, whichever is the basis of the taxpayer's election under this subsection, or (B) within one year from such date, by any provision of law (other than this paragraph and other than section 3761, relating to compromises), an adjustment of the tax liability shall nevertheless be made if in respect of such taxable year a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within one year after the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the

adjustment is so prevented, then the amount of the adjustment authorized in this paragraph shall be limited to the increase or decrease in the tax previously determined for such taxable year which results solely from the effect of paragraph (4) of this subsection, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such certificate or such proclamation, whichever is the basis of the taxpayer's election under this subsection, one year remained before the expiration of the periods of limitation upon assessment or filing claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 3801 (d). The amount to be assessed and collected under this paragraph in the same manner as if it were a deficiency, or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain, or loss, other than one resulting from the effect of paragraph (4) of this subsection.

Ascertainment of tax.
53 Stat. 473.
26 U. S. C., Supp. V, § 3901 (d).

No recovery by claim, etc.

“(e) DEFINITIONS.—

“(1) EMERGENCY FACILITY.—As used in this section, the term ‘emergency facility’ means any facility, land, building, machinery, or equipment, or part thereof, the construction, reconstruction, erection, or installation of which was completed after June 10, 1940, or which was acquired after such date, and with respect to which a certificate under subsection (f) has been made.

“Emergency facility.”

“(2) EMERGENCY PERIOD.—As used in this section, the term ‘emergency period’ means the period beginning June 10, 1940, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which certifications under subsection (f) have been made, is no longer required in the interest of national defense.

“Emergency period.”

“(f) DETERMINATION OF ADJUSTED BASIS OF EMERGENCY FACILITY.—In determining, for the purposes of subsection (a) or subsection (h), the adjusted basis of an emergency facility—

Determination of adjusted basis of emergency facility.
A^{nt}c. p. 999; post, p. 1002.
Amount included.

“(1) There shall be included only so much of the amount otherwise constituting such adjusted basis as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after June 10, 1940, as the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy have certified, within the time specified in paragraph (3) of this subsection, and under such regulations as the President may prescribe, as necessary in the interest of national defense during the emergency period;

“(2) After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1), shall not be applied in adjustment of the basis of such facility and shall be considered as an expenditure with respect to a new emergency facility; and

Expenditures.

Validity of certificate.

“(3) The certificate provided for in paragraph (1) shall have no effect unless made before whichever of the following dates is the later: (A) The beginning of such construction, reconstruction, erection, or installation, or the date of such acquisition, or (B) the one hundred and twentieth day after the date of the enactment of the Second Revenue Act of 1940.

Anle, p. 974; *post*, p. 1018.

Depreciation deduction.

“(g) DEPRECIATION DEDUCTION.—If the adjusted basis of the emergency facility computed without regard to subsection (f) of this section is in excess of the adjusted basis computed under such subsection, the deduction provided by section 23 (1) shall, despite the provisions of subsection (a) of this section, be allowed with respect to such emergency facility as if its adjusted basis were an amount equal to the amount of such excess.

53 Stat. 14.
26 U. S. C., Supp. V, § 23 (l).

Payment by U. S. of unamortized cost of facility.

“(h) PAYMENT BY UNITED STATES OF UNAMORTIZED COST OF FACILITY.—If an amount is properly includible in the gross income of the taxpayer on account of a payment with respect to an emergency facility and such payment is certified as provided in this paragraph, then, at the election of the taxpayer in its return for the taxable year in which such amount is so includible—

Amortization deduction.

“(1) The amortization deduction for the month in which such amount is so includible shall (in lieu of the amount of the deduction for such month computed under subsection (a)) be the amount so includible, but such deduction shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amortization deduction for such month). Payments referred to in this paragraph shall be payments the amounts of which are certified, under such regulations as the President may prescribe, by either the Secretary of War or the Secretary of the Navy as compensation to the taxpayer for the unamortized cost of the emergency facility made because—

Payments.

“(A) A contract with the United States involving the use of the facility has been terminated by its terms or by cancellation, or

“(B) the taxpayer had reasonable grounds (either from provisions of a contract with the United States involving the use of the facility, or from written or oral representations made under authority of the United States) for anticipating future contracts involving the use of the facility, which future contracts have not been made.

“(2) In case the taxpayer is not entitled to any amortization deduction with respect to the emergency facility the deduction allowable under section 23 (1) on account of the month in which such amount is so includible shall be increased by such amount, but such deduction on account of such month shall not be in excess of the adjusted basis of the emergency facility as of the end of such month (computed without regard to any amount allowable, on account of such month, under section 23 (1) or this paragraph).

If taxpayer not entitled to amortization deduction.

53 Stat. 14.
26 U. S. C., Supp. V, § 23 (l).

Protection of U. S. If taxpayer reimbursed.

“(i) PROTECTION OF THE UNITED STATES.—If the taxpayer has been or will be reimbursed by the United States for all or a part of the cost of any emergency facility pursuant to any contract with the United States, either—

Directly.

“(1) directly, by a provision therein dealing expressly with such reimbursement, or

Indirectly.

“(2) indirectly, because the price paid by the United States (insofar as return of cost of the facility is used as a factor in the fixing of such price) is recognized by the contract as including a return of cost greater than the normal exhaustion, wear and tear,

no amortization deduction with respect to such emergency facility shall be allowed for any month after the end of the month in which such contract is made, unless, before the expiration of ninety days after the making of such contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940, whichever of such periods expires the later, the Advisory Commission to the Council of National Defense, and either the Secretary of War or the Secretary of the Navy certify to the Commissioner that such contract adequately protects the United States with reference to the future use and disposition of such emergency facility. A certificate by the Advisory Commission to the Council of National Defense and either the Secretary of War or the Secretary of the Navy, made to the Commissioner before the expiration of ninety days after the making of a contract or one hundred and twenty days after the date of the enactment of the Second Revenue Act of 1940, whichever of such periods expires the later, to the effect that, under such contract, reimbursement for all or a part of the cost of any emergency facility is not provided for within the meaning of clause (1) or clause (2), shall be conclusive for the purposes of this subsection.

"The terms and conditions of contracts with reference to reimbursement of the cost of emergency facilities and the protecting of the United States with reference to the future use and disposition of such emergency facilities shall be made available to the public."

Nonallowance of amortization deduction.

Exception.

Ante, p. 974.

Reimbursement not provided for under contract.

Availability to public of terms of contracts.

TITLE IV—SUSPENSION OF PROFIT-LIMITING PROVISIONS OF THE VINSON ACT AND CERTAIN PROVISIONS OF THE MERCHANT MARINE ACT, 1936

SEC. 401. SUSPENSION OF PROFIT-LIMITING PROVISIONS OF THE VINSON ACT.

The provisions of section 3 of the Act of March 27, 1934 (48 Stat. 505; 34 U. S. C., sec. 496), as amended, beginning with the first proviso thereof, and section 2 (b) of the Act of June 28, 1940 (Public, Numbered 671, Seventy-sixth Congress, third session), shall not apply to contracts or subcontracts for the construction or manufacture of any complete naval vessel or any Army or Navy aircraft, or any portion thereof, which are entered into in any taxable year to which the excess profits tax provided in subchapter E of Chapter 2 of the Internal Revenue Code is applicable or would be applicable if the contractor or subcontractor, as the case may be, were a corporation, and any agreement to pay into the Treasury profit in excess of 10 per centum, 12 per centum, or 8 per centum, as the case may be, of the contract prices of any such contracts or subcontracts shall be without effect. This section shall also apply to such contracts or subcontracts which were entered into before the date of the beginning of the contractor's or subcontractor's first taxable year which begins in 1940 and which are not completed before such date.

34 U. S. C., Supp. V, § 496.

Ante, pp. 677, 883.

Ante, p. 975.

SEC. 402. SUSPENSION OF PROFIT-LIMITING PROVISIONS OF THE MERCHANT MARINE ACT, 1936, AS TO CERTAIN SUBCONTRACTS.

(a) The provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended, shall not apply to any subcontract which would otherwise be within such provisions if such subcontract is entered into in any taxable year of the subcontractor to which Subchapter E of Chapter 2 of the Internal Revenue Code is applicable and if the

49 Stat. 1996.
46 U. S. C., Supp. V, § 1155 (b).

Ante, p. 975.

principal contractor and the subcontractor between which such subcontract is entered into are not affiliated within the meaning of subsection (b) of this section at the time such subcontract is entered into or at any time thereafter up to and including the date of its completion; and any agreement, pursuant to which the subcontractor is required to pay to the United States Maritime Commission profit in excess of 10 per centum of the contract price of any such subcontract or pursuant to which such an agreement is required to be obtained from such subcontractor relative to such subcontract, shall be without effect. This subsection shall apply only if both the principal contractor and the subcontractor are corporations.

Affiliated corporations.

(b) For the purposes of this section, two or more corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the stock of the other or others, or (2) if at least 95 per centum of the stock of two or more corporations is owned by the same interests. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

"Stock" construed.

TITLE V—AMENDMENTS TO INTERNAL REVENUE CODE

SEC. 501. EARNINGS AND PROFITS OF CORPORATIONS.

Internal Revenue Code, amendments. 53 Stat. 48. 26 U. S. C., Supp. V, § 115 (k).

Effect of gain or loss and of receipt of tax-free distributions.

(a) UNDER INTERNAL REVENUE CODE.—Section 115 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsections:

"(1) EFFECT ON EARNINGS AND PROFITS OF GAIN OR LOSS AND OF RECEIPT OF TAX-FREE DISTRIBUTIONS.—The gain or loss realized from the sale or other disposition (after February 28, 1913) of property by a corporation—

"(1) for the purpose of the computation of earnings and profits of the corporation, shall be determined, except as provided in paragraph (2), by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain, except that no regard shall be had to the value of the property as of March 1, 1913; but

"(2) for the purpose of the computation of earnings and profits of the corporation for any period beginning after February 28, 1913, shall be determined by using as the adjusted basis the adjusted basis (under the law applicable to the year in which the sale or other disposition was made) for determining gain.

Gain or loss so realized shall increase or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing net income under the law applicable to the year in which such sale or disposition was made. Where in determining the adjusted basis used in computing such realized gain or loss the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings or profits, then the latter adjustment shall be used in determining the increase or decrease above provided. Where a corporation receives (after February 28, 1913) a distribution from a second corporation which (under the law applicable to the year in which the distribution was made) was not a taxable dividend to the shareholders of the second corporation, the amount of such distribution shall not increase the earnings and profits of the first corporation in the following cases:

"(1) No such increase shall be made in respect of the part of such distribution which (under such law) is directly applied in reduction of the basis of the stock in respect of which the distribution was made.

“(2) No such increase shall be made if (under such law) the distribution causes the basis of the stock in respect of which the distribution was made to be allocated between such stock and the property received.

“(m) EARNINGS AND PROFITS—INCREASE IN VALUE ACCRUED BEFORE MARCH 1, 1913.—

Increase in value accrued before March 1, 1913.

“(1) If any increase or decrease in the earnings or profits for any period beginning after February 28, 1913, with respect to any matter would be different had the adjusted basis of the property involved been determined without regard to its March 1, 1913, value, then, except as provided in paragraph (2), an increase (properly reflecting such difference) shall be made in that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.

“(2) If the application of subsection (1) to a sale or other disposition after February 28, 1913, results in a loss which is to be applied in decrease of earnings and profits for any period beginning after February 28, 1913, then, notwithstanding subsection (1) and in lieu of the rule provided in paragraph (1) of this subsection, the amount of such loss so to be applied shall be reduced by the amount, if any, by which the adjusted basis of the property used in determining the loss, exceeds the adjusted basis computed without regard to the value of the property on March 1, 1913, and if such amount so applied in reduction of the decrease exceeds such loss, the excess over such loss shall increase that part of the earnings and profits consisting of increase in value of property accrued before March 1, 1913.”

(b) EFFECTIVE DATE OF AMENDMENT.—The amendment made by subsection (a) shall be applicable to taxable years beginning after December 31, 1938.

Effective date of amendment.

(c) UNDER PRIOR ACTS.—For the purposes of the Revenue Act of 1938 or any prior Revenue Act the amendments made to the Internal Revenue Code by subsection (a) of this section shall be effective as if they were a part of each such Revenue Act on the date of its enactment. Nothing in this subsection shall affect the tax liability of any taxpayer for any year which, on September 20, 1940, was pending before, or was theretofore determined by, the Board of Tax Appeals, or any court of the United States.

Under prior Acts.
52 Stat. 447.

Ante, p. 1004.

SEC. 502. TAX OF SHAREHOLDERS OF PERSONAL SERVICE CORPORATIONS.

The Internal Revenue Code is amended by inserting after section 373 the following new Supplement:

53 Stat. 102.
26 U. S. C., Supp.
V, § 373.

“Supplement S—Tax of Shareholders of Personal Service Corporations

“SEC. 391. APPLICABILITY OF SUPPLEMENT.

“If a personal service corporation (as defined in section 725) is exempt under such section for any taxable year from the excess profits tax imposed by such subchapter, the provisions of this Supplement shall be applicable with respect to each shareholder of such corporation who was a shareholder in such corporation on the last day of such taxable year of the corporation.

Applicability of Supplement.
Ante, p. 987.

“SEC. 392. UNDISTRIBUTED SUPPLEMENT S NET INCOME.

“For the purposes of this chapter, the term ‘undistributed Supplement S net income’ means the Supplement S net income (as defined in section 393) minus the amount of the dividends paid during the

“Undistributed Supplement S net income.”
Post, p. 1006.

taxable year. For the purposes of this section the amount of dividends paid shall be computed in the same manner as provided in subsections (d), (e), (f), (g), (h), and (i) of section 27 for the purpose of the basic surtax credit provided in section 27.

53 Stat. 20.
26 U. S. C., Supp.
V, § 27 (d)-(i).

“SEC. 393. SUPPLEMENT S NET INCOME.

“Supplement S net income” defined; exception.

“For the purposes of this chapter ‘Supplement S net income’ means the net income, except that there shall be allowed as additional deductions—

“(a) The Federal income tax payable under this chapter for the taxable year; and

“(b) In lieu of the deduction allowed by section 23 (q), contributions or gifts, payment of which is made within the taxable year, to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the corporation’s net income, computed without the benefit of this subsection and section 23 (q).

53 Stat. 15.
26 U. S. C., Supp.
V, § 23 (q).

“SEC. 394. CORPORATION INCOME TAXED TO SHAREHOLDERS.

General rule.

“(a) GENERAL RULE.—The undistributed Supplement S net income of a personal service corporation shall be included in the gross income of the shareholders in the manner and to the extent set forth in this Supplement.

Amount included in gross income.

“(b) AMOUNT INCLUDED IN GROSS INCOME.—Each shareholder who, on the last day of the taxable year of the corporation, was a shareholder in such corporation shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend if on such last day there had been distributed by the corporation, and received by the shareholders, an amount equal to the undistributed Supplement S net income of the corporation for its taxable year.

Credit for obligations of U. S., etc.
53 Stat. 5, 7, 8, 71,
72, 74, 99.
26 U. S. C., Supp.
V, § 11, 13, 14, 201, 204,
207, or 362.

“(c) CREDIT FOR OBLIGATIONS OF THE UNITED STATES AND ITS INSTRUMENTALITIES.—Each such shareholder shall be allowed a credit against net income, for the purposes of the tax imposed by section 11, 13, 14, 201, 204, 207, or 362, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the corporation.

53 Stat. 17.
26 U. S. C., Supp.
V, § 25 (a) (1) or (2).
Effect on capital account of personal service corporation.

“(d) EFFECT ON CAPITAL ACCOUNT OF PERSONAL SERVICE CORPORATION.—An amount equal to the undistributed Supplement S net income of the personal service corporation for its taxable year shall be considered as paid in as of the close of such taxable year as paid-in surplus or as a contribution to capital, and the accumulated earnings and profits as of the close of such taxable year shall be correspondingly reduced, if such amount or any portion thereof is required to be included as a dividend in the gross income of the shareholders.

Basis of stock in hands of shareholders.

“(e) BASIS OF STOCK IN HANDS OF SHAREHOLDERS.—The amount required to be included in the gross income of the shareholder under subsection (b) shall, for the purpose of adjusting the basis of his stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder’s tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

Period of limitation on assessment and collection.

“(f) PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION.—For period of limitation on assessment and collection without assessment,

in the case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d).

53 Stat. 87,
26 U. S. C., Supp.
V, § 275 (d).
Infra.

“SEC. 395. NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS.

“In the case of a shareholder taxable under section 211 (a) or 231 (a), his distributive share of the undistributed Supplement S net income of the corporation required to be included in the gross income shall be considered as a dividend received by him from sources within the United States.

53 Stat. 75, 78,
26 U. S. C., Supp.
V, §§ 211 (a), 231 (a).

“SEC. 396. SHAREHOLDER'S TAX PAID BY CORPORATION.

“If a personal service corporation is exempt for any taxable year under section 725 from excess profits tax, it shall, at the time of filing its return, pay to the collector an amount equal to the amount that would be required by section 143 (b) or section 144 to be deducted and withheld by the corporation if any amount required by this Supplement to be included in the gross income of the shareholder had been, on the last day of the taxable year of the corporation, paid to the shareholder in cash as a dividend. Such amount shall be collected and paid in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return.”

Ante, p. 987.

53 Stat. 61, 62,
26 U. S. C., Supp.
V, §§ 143 (b), 144.
Ante, p. 519.

SEC. 503. STATUTE OF LIMITATIONS IN CASE OF CONSTRUCTIVE DIVIDENDS.

Section 275 (d) of the Internal Revenue Code (relating to statute of limitations) is amended to read as follows:

“(d) **CONSTRUCTIVE DIVIDENDS.**—If the taxpayer omits from gross income an amount properly includible therein—

53 Stat. 87,
26 U. S. C., Supp.
V, § 275 (d).

Constructive dividends.

“(1) **FOREIGN PERSONAL-HOLDING COMPANIES.**—Under section 337 (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement P net income of a foreign personal-holding company); or

Foreign personal-holding companies.

53 Stat. 96,
26 U. S. C., Supp.
V, § 337 (b).
53 Stat. 92.

“(2) **PERSONAL SERVICE CORPORATIONS.**—Under section 394 (b) (relating to the inclusion in the gross income of shareholders of their distributive shares of undistributed Supplement S net income of a personal service corporation);

Personal service corporations.
Ante, p. 1006.

the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within seven years after the return was filed.”

SEC. 504. CREDIT OF NONRESIDENT ALIEN OF TAX AS SHAREHOLDER IN PERSONAL SERVICE CORPORATION.

Section 216 of the Internal Revenue Code (relating to credit against tax of a nonresident alien individual) is amended by adding at the end thereof a new sentence to read as follows: “A nonresident alien individual shall be allowed as a credit against his tax the amount required by section 396 to be paid by the personal service corporation of which he is a shareholder with respect to his tax liability under Supplement S.”

53 Stat. 77,
26 U. S. C., Supp.
V, § 216.

Supra.

Ante, p. 1005.

SEC. 505. CREDIT OF FOREIGN CORPORATION OF TAX AS SHAREHOLDER IN PERSONAL SERVICE CORPORATION.

Section 234 of the Internal Revenue Code (relating to credits against tax of foreign corporations) is amended by adding at the end thereof a new sentence to read as follows: “A foreign corpora-

53 Stat. 79,
26 U. S. C., Supp.
V, § 234.

Ante, p. 1007.

Ante, p. 1005.

tion shall be allowed as a credit against its tax the amount required by section 396 to be paid by the personal service corporation of which it is a shareholder with respect to its tax liability under Supplement S.”.

SEC. 506. CHANGE OF NAME OF EXISTING EXCESS-PROFITS TAX.

53 Stat. 111.
26 U. S. C., Supp.
V, §§ 600-604.

(a) Subchapter B of Chapter 2 of the Internal Revenue Code is amended, effective February 10, 1939, by striking out, in the heading of such subchapter, “EXCESS-PROFITS TAX” and inserting in lieu thereof “DECLARED VALUE EXCESS-PROFITS TAX”, and by striking out, in the first paragraph of section 600 of such subchapter, “excess-profits tax” and inserting in lieu thereof “declared value excess-profits tax”.

53 Stat. 12.
26 U. S. C., Supp.
V, § 23 (c) (1).

(b) Section 23 (c) (1) of the Internal Revenue Code (relating to taxes not deductible in computing net income) is amended, effective February 10, 1939, to read as follows:

“(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by section 106 of the Revenue Act of 1935 (49 Stat. 1019), or by section 602 of the Revenue Act of 1938 (52 Stat. 567), and other than the declared value excess-profits tax imposed by section 600);”.

53 Stat. 111.
26 U. S. C., Supp.
V, §§ 600-603.

SEC. 507. PUBLICITY OF RETURNS OF SUBCHAPTER E EXCESS PROFITS TAX.

53 Stat. 29.
26 U. S. C., Supp.
V, § 55 (a) (2).

Section 55 (a) (2) of the Internal Revenue Code is amended by striking out “Subchapters A, B, and D of Chapter 2” and inserting in lieu thereof “Subchapters A, B, D, and E of Chapter 2”.

SEC. 508. TECHNICAL AMENDMENTS.

Limitation on assessment and collection.
53 Stat. 400.
26 U. S. C., Supp.
V, § 3312.

(a) **LIMITATION ON ASSESSMENT AND COLLECTION.**—Section 3312 of the Internal Revenue Code (relating to period of limitation on assessment and collection of taxes) is amended by striking out “Except in the case of income, estate, and gift taxes” and inserting in lieu thereof “Except in the case of income, war-profits, excess-profits, estate, and gift taxes”.

Abatement, credit, and refund of taxes.

53 Stat. 464.
26 U. S. C., Supp.
V, § 3770 (a) (1).

(b) **ABATEMENT, CREDIT, AND REFUND OF TAXES.**—Section 3770 (a) (1) of the Internal Revenue Code (relating to authority to abate, credit, or refund tax) is amended by striking out “Except as otherwise provided by law in the case of income, estate, and gift taxes” and inserting in lieu thereof “Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes”.

TITLE VI—NATIONAL SERVICE LIFE INSURANCE AND PROVISIONS AFFECTING THE RAILROAD RETIREMENT BOARD

Part I—National Service Life Insurance

SEC. 601. When used in this part—

“Person” defined.

(a) The term “person” means (1) a commissioned officer; (2) a warrant officer; (3) enlisted personnel (including persons selected for training and service under the Selective Training and Service Act of 1940); (4) a member of the Army Nurse Corps (female); and (5) a member of the Navy Nurse Corps (female);

Ante, p. 885.

“Administrator.”

(b) The term “Administrator” means the Administrator of Veterans’ Affairs;

National Service Life Insurance Act of 1940.

(c) The term "active service" means active service in the land or naval forces (including the Coast Guard) of the United States and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940, but the service of any person ordered to active duty in any such force for a period of thirty days or less, shall not be deemed to be active service in such force during such period;

"Active service."

Ante, p. 885.

"Insurance."

"Child."

Persons eligible for such insurance.

Persons released from active service.

Reenlistment, etc.

Persons in active service on date of enactment of this Act.

Premium rates.

Issuance upon term plan; conversion.

(d) The term "insurance" means National Service Life Insurance;

(e) The term "child" includes an adopted child.

SEC. 602. (a) Every person who is commissioned and hereafter ordered into, or who is hereafter examined, accepted, and enrolled in, the active service and while in such active service shall, upon application in writing (made within one hundred and twenty days after entrance into such active service) and payment of premiums as hereinafter provided and without further medical examination, be granted insurance on the five-year level premium term plan by the United States against the death of such person occurring while such insurance is in force.

(b) Any person who is released from active service within one hundred and twenty days after such enrollment shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after a subsequent enrollment or entrance into active service and before discharge or resignation therefrom), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(c) Any person upon reenlistment or reentrance into or reemployment in active service and before discharge or resignation therefrom and any person in the active service upon discharge to accept a commission and before resignation therefrom, shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days following such reenlistment, reentrance, reemployment, or discharge to accept a commission), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(d) Any person who has been commissioned, or examined, accepted, and enrolled, in the active service and is in such active service on the date of enactment of this Act shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after the date of enactment of this Act and before discharge or resignation from such active service), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(e) The premium rates for such insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

(f) Such insurance shall be issued upon the five year level premium term plan, with the privilege of conversion as of the date when any premium becomes or has become due, or exchange as of the date of the original policy, upon payment of the difference in reserve, at any time after such policy has been in effect for one year and within the five year term period, to policies of insurance upon the following plans: Ordinary life, twenty payment life, thirty payment life. All five year level premium term policies shall cease and terminate at the expiration of the five year term period. Provisions for cash, loan,

paid up, and extended values, dividends from gains and savings, refund of unearned premiums, and such other provisions as may be found to be reasonable and practicable, may be provided for in the policy of insurance or from time to time by regulations promulgated by the Administrator.

Beneficiary.

(g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

Payments.

(h) Such insurance shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—

(A) to the widow or widower of the insured, if living;

(B) if no widow or widower, to the child or children of the insured, if living, in equal shares;

(C) if no widow, widower, or child, to the parent or parents of the insured, if living, in equal shares;

(D) if no widow, widower, child, or parent, to the brothers and sisters of the insured, if living, in equal shares.

(i) If no beneficiary is designated by the insured or if the designated beneficiary does not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h).

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to receive the insurance or any part thereof no payment of the unpaid installments shall be made.

(k) When the amount of an individual monthly payment is less than \$5, such amount may, in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually.

(l) Any payments of insurance made to a person represented by the insured to be within the permitted class of beneficiaries shall be

Determination of beneficiary if none designated, etc.

Restriction on installment payments.

Monthly payments less than \$5.

Payments to designated persons.

deemed to have been properly made and to satisfy fully the obligation of the United States under such insurance policy to the extent of such payments.

(m) The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be deducted from his active service pay or be otherwise made.

(n) Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during continuous total disability of the insured which commenced subsequent to the effective date of such insurance and which has existed for six consecutive months or more prior to the attainment by the insured of the age of sixty years, effective as of the due date of the monthly premium becoming payable on or after the first day of the seventh consecutive month of such disability: *Provided*, That application for waiver is made while the insurance is currently kept in force by the payment of premiums, and the insured furnishes proof satisfactory to the Administrator showing that he is and has been continuously totally disabled for six or more months prior to attaining sixty years of age. Any waiver granted by the Administrator under this subsection shall not become effective prior to the date of application therefor; except that, in the discretion of the Administrator, it may be made effective at any time within a period of not more than six months prior to such date but in no event prior to the first day of the seventh month of such continuous disability. Any premiums tendered to cover a period during which such waiver is effective shall be refunded. The Administrator shall provide by regulations for reexaminations of beneficiaries under this subsection and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

(o) The Administrator shall promptly determine and publish the terms and conditions of such insurance. Pending the promulgation of the terms and conditions of the five year level premium term policy and the printing of such policy, the Administrator may issue a certificate in lieu thereof as evidence that insurance has been granted and the rights and liabilities of the applicant and of the United States shall be those specified by the terms and conditions of the policy when published.

(p) Such insurance may be made effective, as specified in the application, not later than the first day of the calendar month following the date of application therefor, but the United States shall not be liable thereunder for death occurring prior to such effective date.

(q) Such insurance shall be issued in any multiple of \$500 and the amount of such insurance with respect to any one person shall be not less than \$1,000 or more than \$10,000.

SEC. 603. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of \$10,000 at any one time.

SEC. 604. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this part, to be known as the National Service Life Insurance appropriation, for the payment of

Payment of pre-
miums.

Waiver of pre-
miums.

Proviso.
Conditions.

Reexaminations of
beneficiaries.

Promulgation of
terms, etc.

Effective date.

Multiple and
amount.

Combined amount,
maximum.

National Service
Life Insurance appro-
priation.

Payments.

liabilities under National Service Life Insurance. Payments from this appropriation shall be made upon and in accordance with awards by the Administrator.

National Service Life Insurance Fund.

SEC. 605. (a) There is hereby created in the Treasury a permanent trust fund to be known as the National Service Life Insurance Fund. All premiums paid on account of National Service Life Insurance shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

Payments.

Reserve amounts.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

Cost of administration.

SEC. 606. The United States shall bear the cost of administration in connection with this part, including expenses for medical examinations, printing and binding, and for such other expenditures as are necessary in the discretion of the Administrator. The appropriations made for the Veterans' Administration for the fiscal year 1941 for administrative expenses shall be available for the payment of such costs of administration under this part.

Funds available. *Ante*, p. 139.

Excess mortality cost, etc.

SEC. 607. (a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator.

Benefits where death traceable to extra hazard of service.

(b) Whenever benefits under such insurance become payable because of the death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured, will equal the then value of such benefits under such policy. The Administrator is authorized and directed to transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

Transfer of sums.

Transfer of amounts to cover waiver of premiums. *Ante*, p. 1011.

(c) Whenever the premiums under such insurance are waived as provided in section 602 (n) because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the premiums so waived shall be paid by the United States and the Administrator is authorized and directed to transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

Authority of Administrator.

SEC. 608. The Administrator, subject to the general direction of the President, shall administer, execute and enforce the provisions of this part, shall have power to make such rules and regulations, not inconsistent with the provisions of this part, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. All officers and employees of the Veterans' Administration shall perform such duties in connection with the administration of this part as may be assigned to them by the Administrator. All official

Veterans' Administration employees.

acts performed by such officers or employees designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator in person. Except in the event of suit as provided in section 617 hereof, all decisions rendered by the Administrator under the provisions of this part, or regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by motion or otherwise any such decision.

Post, p. 1014.

SEC. 609. (a) There shall be no recovery of payments made under this part from any person who, in the judgment of the Administrator, is without fault on his part and where, in the judgment of the said Administrator, such recovery would defeat the purpose of benefits otherwise authorized herein or would be against equity and good conscience. No disbursing officer or certifying officer shall be held liable for any amount paid to any person where the recovery of such amount is waived under this section.

Recovery of payments.

(b) Where, under the provisions of this section, the recovery of a payment made from the National Service Life Insurance Fund is waived, the National Service Life Insurance Fund shall be reimbursed for the amount of such payment from the current appropriation for National Service Life Insurance.

Reimbursement where recovery waived.

SEC. 610. No State law providing for presumption of death shall be applicable to claims for National Service Life Insurance. If evidence satisfactory to the Administrator is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of seven years, during which period no evidence of his existence has been received, the death of such individual as of the date of the expiration of such period may, for the purposes of this part, be considered as sufficiently proved.

Inapplicability of State law providing for presumption of death.

SEC. 611. No United States Government life insurance shall be granted hereafter to any person under the provisions of section 300 of the World War Veterans' Act, 1924, as amended: *Provided*, That this section shall not be construed to prohibit the issue of United States Government life insurance policies in cases in which acceptable applications accompanied by proper and valid remittances or authorizations for the payment of premiums have, prior to the date of enactment of this Act, been received by the Veterans' Administration or which have, prior to said date, been placed in the mails properly directed to said Veterans' Administration, or been delivered to an authorized representative of the War Department, the Navy Department, or the Coast Guard, and which are forwarded to the Veterans' Administration not later than one hundred and twenty days subsequent to said date.

U. S. Government life insurance.
43 Stat. 624.
38 U. S. C. § 511.
Proviso.
Applications received prior to enactment.

SEC. 612. Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the land or naval forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to insurance under this part. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of such death shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in section 602 (h) (3).

Forfeiture of rights to insurance.

SEC. 613. Whoever in any claim for insurance issued under the provisions of this part makes any sworn statement of a material fact knowing it to be false, shall be guilty of perjury and shall, upon conviction thereof, be punished by a fine of not more than \$5,000, or by imprisonment for not more than two years, or by both such fine and imprisonment.

And, p. 1010.

Perjury.

Penalty.

Fraud.

SEC. 614. Whoever, with intent to defraud the United States or any beneficiary of such insurance, shall obtain or receive any money or check for National Service Life Insurance without being entitled to the same, shall, upon conviction thereof, be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Penalty.

False or fraudulent affidavits, etc.

SEC. 615. Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any application for insurance or reinstatement thereof, waiver of premiums or claim for benefits under National Service Life Insurance for himself or any other person, shall, upon conviction thereof, be punished by a fine of not more than \$1,000, or imprisonment for not more than one year, or by both such fine and imprisonment.

Penalty.

Application of existing laws.
38 U. S. C., Supp. V, § 450.
49 Stat. 2031, 2033.
38 U. S. C., Supp. V, §§ 101-104, 131-134.

Suit.
Post, p. 1197, § 11.

43 Stat. 612, 628.
38 U. S. C. §§ 445, 551;
Supp. V, §§ 445, 551.

Proviso.
Decision of Administrator.
Ante, p. 1011.

Citation of Part I.

SEC. 616. The provisions of Public Law Numbered 262, Seventy-fourth Congress, approved August 12, 1935 (49 Stat. 607), and titles II and III of Public Law Numbered 844, Seventy-fourth Congress, approved June 29, 1936 (49 Stat. 2031), insofar as they are applicable, shall apply to the provisions of this part.

SEC. 617. In the event of a disagreement as to claim arising under this part, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended: *Provided*, That in any such suit the decision of the Administrator as to waiver or non-waiver of premiums under section 602 (n) shall be conclusive and binding on the court.

SEC. 618. This part may be cited as the "National Service Life Insurance Act of 1940".

Part II—Crediting Military Service for Annuity Purposes Under the Railroad Retirement Acts

Railroad Retirement Act of 1937, amendments.

45 U. S. C., Supp. V, § 228c.

SEC. 625. The Act entitled "An Act to amend an Act entitled 'An Act to establish a retirement system for employees of carriers subject to the Interstate Commerce Act, and for other purposes', approved August 29, 1935," approved June 24, 1937 (50 Stat. 307), is hereby amended by inserting after section 3 the following new section:

"MILITARY SERVICE

Inclusion of military service for annuity purposes.

Provisos.
Limitation.
50 Stat. 310.
45 U. S. C., Supp. V, § 228c (b).
Military service prior to war service period.

"SEC. 3A. (a) For the purposes of determining eligibility for an annuity and computing an annuity, including a minimum annuity, there shall also be included in an individual's years of service, within the limitations hereinafter provided in this section, voluntary or involuntary military service of an individual prior to January 1, 1937, within or without the United States during any war service period: *Provided, however*, That such military service shall be included only subject to and in accordance with the provisions of subsection (b) of section 3, in the same manner as though military service were service rendered as an employee: *Provided further*, That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

"Military service."
50 Stat. 318.
45 U. S. C., Supp. V, §§ 215-228 (note).

"(b) For the purpose of this section and section 202, as amended, an individual shall be deemed to have been in 'military service' when commissioned or enrolled in the active service of the land or naval

forces of the United States and until resignation or discharge therefrom; and the service of any individual in any reserve component of the land or naval forces of the United States who was ordered to active duty in any such force for a period of thirty days or less shall be deemed to have been active service in such force during such period.

“(c) For the purpose of this section and section 202, as amended, a ‘war service period’ shall mean (1) any war period, or (2) with respect to any particular individual, any period during which such individual (i) having been in military service at the end of a war period, was required to continue in military service, or (ii) was required by any Act of Congress, any regulation promulgated, order issued, or proclamation made, in pursuance of such Act, to enter and continue in military service.

“(d) For the purpose of this section and section 202, as amended, a ‘war period’ shall be deemed to have begun on whichever of the following dates is the earliest: (1) the date on which the Congress of the United States declared war; or (2) the date as of which the Congress of the United States declared that a state of war has existed; or (3) the date on which war was declared by one or more foreign states against the United States; or (4) the date on which any part of the United States or any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (5) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government.

“(e) For the purpose of this section and section 202, as amended, a ‘war period’ shall be deemed to have ended on the date on which hostilities ceased.

“(f) Military service shall not be included in the years of service of an individual unless, in the calendar year in which his military service in a war service period began, or in the calendar year next preceding such calendar year, he rendered service for compensation to an employer, or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative.

“(g) A calendar month in which an individual was in military service which may be included in the individual’s years of service or service period, as the case may be, shall be counted as a month of service: *Provided, however,* That no calendar month shall be counted as more than one month of service.

“(h) In determining the monthly compensation for computing an annuity, military service and any remuneration therefor shall be disregarded.

“(i) In the event military service is or has been used as the basis or as a partial basis for a pension, disability compensation, or any other gratuitous benefits payable on a periodic basis under any other Act of Congress, any annuity under this Act or the Railroad Retirement Act of 1935, which is based in part on such military service and is with respect to a calendar month for all or part of which such pension or other benefit is also payable, shall be reduced with respect to that month by the proportion which the number of years of service by which such military service increases the years of service, or the service period, as the case may be, bears to the total years of service, or by the aggregate amount of such pension or other benefit with respect to that month, whichever would result in the smaller reduction.

“(j) Any department or agency of the United States maintaining records of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the number of months of military service which such department or agency finds the indi-

“War service period.”
50 Stat. 318.
45 U. S. C. Supp.
V, §§ 215-228 (note).

“War period,” date of beginning.

“War period,” date of ending.

Military service credits.

Counting of calendar month as a month of service.

Proviso.
Limitation.

Monthly compensation for computation of annuity.

Annuity based in part on military service.

49 Stat. 967.
45 U. S. C., Supp.
V, §§ 215-228.

Certification of military service.

Certification of amounts of pension, etc.

Proviso.
Recertification.

Annuities.
Ante, p. 974; *post*, p. 1018.

49 Stat. 967.
45 U. S. C., Supp.
V, §§ 215-228.

Increased annuity based on military service.
Ante, p. 974.
49 Stat. 967.
45 U. S. C., Supp.
V, §§ 215-228.

Provisos.
Joint and survivor annuity.

Effective date of increase.

vidual to have had during any period or periods with respect to which the Board's request is made, the date and manner of entry into such military service, and the conditions under which such service was continued. Any department or agency of the United States which is authorized to make awards of pensions, disability compensation, or any other gratuitous benefits or allowances payable, on a periodic basis or otherwise, under any other Act of Congress on the basis of military service, at the request of the Board, shall certify to the Board, with respect to any individual, the calendar months for all or part of which any such pension, compensation, benefit, or allowance is payable to, or with respect to, the individual, the amounts of any such pension, compensation, benefit, or allowance, and the military service on which such pension, compensation, benefit, or allowance is based. Any certification made pursuant to the provisions of this subsection shall be conclusive on the Board: *Provided*, That if evidence inconsistent with any such certification is submitted, and the claim is in the course of adjudication or is otherwise open for such evidence, the Board shall refer such evidence to the department or agency which made the original certification and such department or agency shall make such recertification as in its judgment the evidence warrants. Such recertification, and any subsequent recertification, shall be conclusive, made in the same manner, and subject to the same conditions as an original certification.

"(k) In the event that an individual was, on or before the date of enactment of the Second Revenue Act of 1940, denied an annuity but could have been granted an annuity under the provisions of this Act or the Railroad Retirement Act of 1935 had military service been included in his years of service or service period, as the case may be, no annuity shall be payable with respect to such individual, or with respect to his death, by reason of the provisions of this section, unless such individual files a new application with the Board. In determining the earliest date upon which an annuity can begin to accrue for such an individual in accordance with the provisions of section 2, the filing date of the application shall be the date on which such new application is filed.

"(l) An individual who, on or before the date of enactment of the Second Revenue Act of 1940, was awarded an annuity under the provisions of this Act or the Railroad Retirement Act of 1935, but whose annuity would have been increased if his military service had been included in his years of service or service period, as the case may be, may, notwithstanding the previous award of an annuity, make application (in such manner and form as may be prescribed by the Board) for an increase in such annuity based on his military service. Upon the filing of such application, if the Board finds that the military service thus claimed is creditable and would result in an increase in the annuity, the Board, notwithstanding the previous award, shall recertify the annuity on an increased basis in the same manner as though this section had been in effect at the time of the original certification: *Provided, however*, That if the annuity previously awarded is a joint and survivor annuity, the increased annuity shall be a joint and survivor annuity of the same type except that if on the date the increase begins to accrue the individual has no spouse for whom the election of the joint and survivor annuity was made, the increase on a single life basis shall be added to the individual's annuity: *And provided further*, That such increase in the annuity shall not begin to accrue more than sixty days before the filing date of the application for an increase in the annuity based on military service, and in the event the annuity is a joint and survivor annuity, the actuarial value of the increase in annuity shall be computed as of the effective date of the increase.

“(m) In addition to the amount authorized to be appropriated in subsection (a) of section 15 of this Act, there is hereby authorized to be appropriated to the Railroad Retirement Account for each fiscal year, beginning with the fiscal year ending June 30, 1941, an amount sufficient to meet the additional expenditures necessary to be made during each such fiscal year by reason of crediting under the Railroad Retirement Acts military service prior to January 1, 1937. The Railroad Retirement Board, as promptly as practicable after the date of enactment of the Second Revenue Act of 1940, and thereafter annually, shall submit to the Bureau of the Budget estimates of such military service appropriations to be made to the account in addition to the annual estimates by the Board, in accordance with subsection (a) of section 15 of this Act, of the appropriations to be made to the account to provide for the payment of annuities, pensions and death benefits not based on military service. Each such estimate shall take into account the excess or the deficiency, if any, in such military service appropriation for the preceding fiscal year.”

SEC. 626. Section 202 of such Act of June 24, 1937, is hereby amended by inserting immediately after the second proviso of such section the following new proviso: “*And provided further*, That for the purposes of determining eligibility for an annuity and computing an annuity there shall also be included in an individual's service period, subject to and in accordance with subsections (a) to (l), inclusive, of section 3A of this Act, voluntary or involuntary military service of an individual prior to January 1, 1937, within or without the United States during any war service period, if, in the calendar year in which his military service in a war service period began, or in the calendar year next preceding such calendar year, he was in the compensated service of a carrier, or of a person service to which is otherwise creditable, or was serving as a representative; but such military service shall be included only subject to and in accordance with the provisions of the Railroad Retirement Act of 1935, in the same manner as though military service were service rendered as an employee.”

Additional annual appropriations authorized.
50 Stat. 316.
45 U. S. C., Supp. V, § 223 (o).

Submission of estimates.
Ante, p. 974.

50 Stat. 318.
45 U. S. C., Supp. V, § 215.

Proviso.
Determination of eligibility for annuity; computation.

Ante, pp. 1014-1016.

49 Stat. 967.
45 U. S. C., Supp. V, §§ 215-228.

TITLE VII—CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES

SEC. 701. CREDIT AGAINST FEDERAL UNEMPLOYMENT TAXES.

(a) ALLOWANCE OF CREDIT.—Against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, or against the tax imposed by the Federal Unemployment Tax Act for the calendar year 1939, any taxpayer shall be allowed credit for the amount of contributions paid by him into an unemployment fund under a State law—

Allowance of credit.
49 Stat. 639.
42 U. S. C., Supp. V, § 1101.
53 Stat. 183, 1396.
26 U. S. C., Supp. V, §§ 1600-1611.

(1) Before the sixtieth day after the date of the enactment of this Act;

(2) On or after such sixtieth day (except in the case of the tax for the calendar year 1939) with respect to wages paid after the fortieth day after such date of enactment;

(3) Without regard to the date of payment, if the assets of the taxpayer are, at any time during the fifty-nine-day period following such date of enactment, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction.

The amount of such credit, in the case of contributions with respect to the calendar year 1939 paid after the last day upon which the tax-

53 Stat. 186, 1396.
26 U. S. C., Supp.
V, § 1604.

49 Stat. 620.
42 U. S. C., Supp.
V, ch. 7.

53 Stat. 183, 1396.
26 U. S. C., Supp.
V, §§ 1600-1611.

49 Stat. 639.
42 U. S. C., Supp.
V, §§ 1101-1110.

49 Stat. 639.
42 U. S. C., Supp.
V, § 1101.

53 Stat. 183, 1396.
26 U. S. C., Supp.
V, § 1600.

Refund.

payer was required under section 1604 of the Federal Unemployment Tax Act to file a return for such year, 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 provisions of the Social Security Act in force prior to February 11, 1939 (except the provision limiting the credit to amounts paid before the date of filing returns) shall, with respect to the tax for the calendar year 1936, 1937, or 1938, apply to allowance of credit under this section, and the provisions of the Federal Unemployment Tax Act (except section 1601 (a) (3)) shall, with respect to the tax for the calendar year 1939, apply to allowance of credit under this section. The terms used in this subsection shall, with respect to the tax for the calendar year 1936, 1937, or 1938, have the same meaning as when used in title IX of the Social Security Act prior to February 11, 1939, and shall, with respect to the tax for the calendar year 1939, have the same meaning as when used in the Federal Unemployment Tax Act. The total credit allowable against the tax imposed by section 901 of the Social Security Act for the calendar year 1936, 1937, or 1938, or against the tax imposed by section 1600 of the Federal Unemployment Tax Act for the calendar year 1939, shall not exceed 90 per centum of such tax.

(b) REFUND.—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.

Approved, October 8, 1940, 11 p.m., E. S. T.

[CHAPTER 758]

JOINT RESOLUTION

To authorize the United States Maritime Commission to furnish to the State of Pennsylvania a vessel suitable for the use of the Pennsylvania State nautical school, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Maritime Commission is authorized, under such rules and regulations as it may prescribe, to furnish to the State of Pennsylvania for use by the Pennsylvania State nautical school a vessel suitable for merchant marine training, together with all her apparel, charts, books, and instruments of navigation.

SEC. 2. Any department or independent agency of the Government is hereby authorized, notwithstanding any other provision of law, to supply a suitable vessel for such use by the United States Maritime Commission: *Provided*, That the same can be spared without detriment to the service to which it is assigned.

SEC. 3. Any vessel furnished under the authority of this joint resolution shall be and remain the property of the United States and shall be maintained in good repair by the United States Maritime Commission.

Approved, October 8, 1940.

October 8, 1940

[H. J. Res. 603]

[Pub. Res., No. 101]

Pennsylvania State
Nautical School.
Furnishing vessel
to.

Supply of vessel
by any Government
agency.

Provido.

Vessel to remain
U. S. property.