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THE CORPORATION TAX LAW
OF
1909

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A Letter to the Members of
THE AMERICAN ASSOCIATION
OF
PUBLIC ACCOUNTANTS

TOGETHER WITH

**Copies of Correspondence with the Attorney General,
and a Copy of the Act**

+

SEPTEMBER 30, 1909

THE AMERICAN ASSOCIATION OF PUBLIC ACCOUNTANTS

EXECUTIVE COMMITTEE:

J. E. STERRETT, President
T. CULLEN ROBERTS, Secretary
H. T. WESTERMANN, Treasurer

OFFICE OF THE PRESIDENT,
54 William Street

ELJAH W. SELLS
HARVEY S. CHASE
JOHN R. LOOMIS
ROBT. H. MONTGOMERY

NEW YORK, September 30, 1909.

To the Members of

The American Association of Public Accountants :

DEAR SIRS:—Since the enactment of the short-lived Income Tax Law of 1894, perhaps the most important Federal legislation in its bearing upon the accountancy profession is found in the Corporation Tax Law passed at the last session of the Congress. In view of the necessity of every public accountant familiarizing himself with the provisions of this law so that he may assist and advise his clients relative thereto, and especially because of the somewhat vague phraseology and altogether unusual provisions of the Act, your Executive Committee has decided to address each member of the Association in the hope that a careful study of the law may be promoted, and possibly some interest developed looking to an amendment of the Act during the early weeks of the Congress that assembles in December next.

Important legislation is usually enacted by Congress only after careful consideration and full discussion in both the House and Senate, and frequently upon the stump and by the press. The Corporation Tax Law did not run the gauntlet in this manner. In a few short weeks after its first appearance as an amendment to the Tariff Bill it became a part of the law of the land. Even in the brief time devoted to its consideration but little attention seems to have been paid to the provisions of the law relative to the method of determining the amount upon which each corporation is to be assessed. Lack of time no doubt pre-

vented trade, economic and accounting bodies from making themselves heard upon the subject, but it is gratifying to note that a number of the prominent members of our Association did promptly address the Attorney General, calling his attention to the difficulties that would be encountered in administering the Act. The correspondence thus begun did not effect any material change in the then proposed law, but it did serve to bring into a clearer light the intentions of the framers of the bill. Because of its importance in this respect, the entire correspondence, together with the text of the Corporation Tax Law, is attached hereto.

It should be noted that the members of the Association who addressed the Attorney General did so in their private capacities, only because it was impracticable to get action taken by the American Association officials in time to reach Washington before the passage of the bill. The president of the Association was in Europe and other members of the Executive Committee were away on vacations, therefore, after full discussion, it was decided to present the matter to the Attorney General at once in the only form available.

It is evident that the Corporation Tax Law was passed by Congress without sufficient consideration having been given to it to ensure a proper regard for the business, economic and accounting principles involved. The constitutionality of the Act will no doubt be determined by the courts in due course, but in the meantime as members of a professional body, representing very extensive business interests that are affected by this law, we may properly object to and urge the amendment of any feature of the law that is ambiguous, or which makes the law impracticable. Such is evidently the case in the *second* paragraph of Section 38, viz.: "all the ordinary and necessary expenses " actually paid within the year out of income in the maintenance " and operation of its business and properties." This requirement necessarily brings up questions of inventories which are very serious. It will be impossible to comply with the law as it reads and estimates must necessarily be introduced of the cost of stock bought for expense purposes as against capital purposes.

The Corporation Tax Law as elucidated by the Attorney General is a curious blending of the archaic and modern. Accounts prepared under rules of Court in this country are quite generally stated upon a basis of cash receipts and disbursements, and a survival of this ancient method is found in many governmental accounts. The receipt and payment of cash is, however, only one process in the course of business transactions and the commercial world has long since passed the time when an account prepared upon this basis can be accepted as a complete statement of financial position or results. It is true that the Act (and the Attorney General in the correspondence referred to) does not use the term "cash" and it can be argued ingeniously that the words "received" and "actually paid" as found in the law, refer not necessarily to cash, using that term in its ordinary commercial sense, but to a transfer of an asset or the assumption of a liability. In that case the theory of the Act would be in accordance with that laid down by the accountants and the question remaining would be merely one of lucidity. The Attorney General however states in his letter of July 12th— "You contend that this should be changed to read 'expenses incurred' * * * The words 'actually paid' were used advisedly. The theory of the framers of the bill in this respect differs from that which you advocate."

In the light of present information, therefore, it may be assumed that the return to be made by corporations for purposes of taxation under this law must be based upon cash receipts and disbursements, taking into consideration the purely modern item of depreciation and other matters specified in the Act.

It is interesting to note that this method of determining a basis of taxation is apparently original with the framers of this law. Taxes are assessed in numerous ways but we believe this law is the only one in any English speaking country that attempts to levy an income tax upon the difference between cash receipts and disbursements. It is common enough to assess corporations upon their gross earnings or upon their net income or profits. The Income Tax Law of 1894, and we believe its predecessor of 1862, assessed gains, profits and income and the Income Tax Law of Great Britain also assesses upon the basis of profits.

The Corporation Tax Law is therefore different in this important respect from any of the laws that might be expected to serve as a pattern. The Attorney General does not advance any reason for this radical departure further than that the framers of the bill adopted a theory different from that followed in well known precedents.

It is obvious that the peculiar provision relative to the basis of taxation found in the Corporation Tax Law places a great and altogether needless burden upon the corporations of the country. In their letter to the Attorney General under date of July 21st the Accountants show clearly some of the difficulties that will be met with from the corporations' standpoint. There is however another effect that should receive the attention of members of Congress and that is, the certain loss of revenue to the government that will result from this form of assessment. The difficulties placed in the way of making a correct return will very naturally in all cases of doubt be resolved by honest corporation officials in their own favor, while unscrupulous men will find it an easy matter to make a return that will enable them to evade the payment of the tax in whole or in part.

Taxes upon incomes have always proved to some extent difficult of collection but the history of the Income Tax in England proves conclusively that so far as corporations are concerned, an Income Tax Law can be framed and administered in a manner that is equitable to the government and not unreasonably burdensome to the corporations.

It is therefore the judgment of your Executive Committee that members of Congress should be urged to give favorable consideration to amendments to the Corporation Tax Law and if steps are taken promptly to this end, it ought to be possible to secure the passage early in the Congress which meets in December next of such amendments as would remove the present objectionable basis of taxation and put in its place the proper method of a tax upon net profits or income.

We believe that in the interests of the public the members of our Association should use every effort to arouse a sentiment throughout the business community in favor of the modifications above suggested.

Will you therefore give this subject your thoughtful consideration, and if you agree that the Corporation Tax Law should be amended, kindly co-operate by urging these views upon your Senator and Representative in Congress, and by bringing the matter to the attention of your clients and business acquaintances.

We would also be glad to have from you an expression of your views as to any further action you think should be taken by the Association or its officers.

By order of the Executive Committee,

J. E. STERRETT,

President.

T. CULLEN ROBERTS,

Secretary.

Copies of Letters between the
Accountants and the
Attorney General

together with a

Copy of Section 38 of the Tariff
Law of 1909, popularly known
as the Corporation
Tax Law.

NEW YORK CITY, July 8, 1909.

HONORABLE GEORGE W. WICKERSHAM,
Attorney General, Washington, D. C.

DEAR SIR:—On reading the text of the proposed Corporation Tax Law, as reported in the Commercial & Financial Chronicle of July 3, 1909, we have formed the opinion that some of its provisions are absolutely impossible of application, and others violate all the accepted principles of sound accounting.

Under the third clause it is provided that “there shall be deducted
“ from the amount of the net income of each of such corporations,
“ ascertained as provided in the foregoing para-
“ graphs of this section, the sum of \$5,000.00, and said tax shall be
“ computed upon the remainder of said net income of such corporation
“ for the year ending December 31st, 1909, and for
“ each calendar year thereafter; and on or before the 1st day of March,
“ 1910, and the 1st day of March in each year thereafter, a true and
“ accurate return under oath or affirmation of its President”, etc., etc.

In connection with this clause we would call attention to the fact that, as you are no doubt aware, the fiscal year of a number of corporations is not, and for business reasons cannot be, the calendar year, and consequently, having in mind that in such cases an inventory was not taken at the beginning of the calendar year 1909, it is and will be quite impossible for any business, corporation or institution, whose fiscal year does not terminate with the calendar year, to make a true return of its Profits as required by the proposed law.

Under Clause 1 the tax is to be charged upon the “entire net income,” and the net income is to be “ascertained by deducting from the gross amount of the income . . . from all sources,”

- (1) “Expenses actually paid”
- (2) “Losses actually sustained”
- (3) “Interest actually paid”

in each case “within the year.” The words “actually paid” convey, and it is to be presumed are intended to convey actual disbursements out of the Treasury.

The proper deductions should be

- (1) Expenses actually *incurred* because the payment is not necessarily made in the year in which the expense is incurred ;
- (2) Losses actually *ascertained* because losses may be incurred and the amount not be ascertained until a subsequent period ;
- (3) Interest actually *accrued* because interest is never paid until the end of the period during which it accrues, and the interest accrued is the proper charge against income.

In clause 1 the Bill refers to "net income received" ; in clause 2 it refers to "gross income" without the addition of word "received" ; in clause 3, paragraph 3, it refers to "gross income received." There is here a complete confusion between income and income received, which can only lead to endless complication.

Two methods may be adopted for taxation purposes, either

- (1) To tax the difference between actual cash receipts on revenue account and actual cash payments on revenue account, which difference will seldom if ever represent the profits of a manufacturing concern ; or
- (2) To tax profits made up in the ordinary commercial way, namely to ascertain the gross income *earned* whether received or not, and to deduct therefrom
 1. Expenses actually incurred during the year whether paid or not ;
 2. Losses actually ascertained and written off during the year whenever incurred ;
 3. Interest accrued during the year whether paid or not ;
 4. A reasonable allowance for Depreciation of property ; and
 5. Taxes.

As Accountants actively engaged in the audit and examination of a number of varied businesses and enterprises, we unhesitatingly say that the law as framed is absolutely impossible of application, and would suggest that in the said clauses 1, 2 and 3 of paragraph 2 the words "actually paid" and "actually sustained" be changed to read "actually incurred" and "actually ascertained," and that the third clause be changed to read so

that the return will be based on the last completed fiscal year prior to December 31st in cases where the fiscal year of a corporation is not the calendar year.

Yours very truly,

DELOITTE, PLENDER, GRIFFITHS & Co.,
 PRICE, WATERHOUSE & Co.,
 HASKINS & SELLS,
 LYBRAND, ROSS BROS. & MONTGOMERY,
 MARWICK, MITCHELL & Co.,
 NILES & NILES,
 GUNN, RICHARDS & Co.,
 EDWARD P. MOXEY & Co.,
 WILKINSON, RECKITT, WILLIAMS & Co.,
 GEO. H. CHURCH,
 BARROW, WADE, GUTHRIE & Co.,
 LOOMIS, CONANT & Co.

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

JULY 12th, 1909.

MESSRS. DELOITTE, PLENDER, GRIFFITHS & CO.,
New York.

GENTLEMEN :

I am in receipt of the letter signed by your firm and a number of others with respect to the proposed corporation tax law, in which you advise me that you have formed the opinion that some of its provisions are absolutely impossible of application and others violate all the accepted principles of sound accounting.

You first call my attention to the fact that "the fiscal year of a number of corporations is not and for business reasons cannot be the calendar year, and consequently, having in mind that in such cases an inventory was not taken at the beginning of the calendar year 1909, it is and will be quite impossible for any business, corporation or institution, whose fiscal year does not terminate with the calendar year, to make a true return of its profits as required by the proposed law."

I beg to call your attention, in the first place, to the fact that the proposed law does not impose a tax upon "profits" but upon "the entire net income over and above five thousand dollars received by" the corporation, joint stock company or association, or insurance company subject to the law, from "all sources during such year." It has been the uniform practice of the Government in framing revenue bills to require the tax to be paid as of a fixed date, and, so far as I have been able to ascertain, in every instance the tax is imposed for the calendar year ending December 31st. Such was the income tax law of 1894. It may be inconvenient, but it is certainly not impossible for any corporation which keeps just and true books of account to make up a return such as that required by the proposed law, particularly as the return requires statements of actual receipts and payments, and not, as you recommend in your communication, of expenses "incurred," interest "accrued," and losses "ascertained."

2. You next object that the proposed law authorizes the deduction of "expenses actually paid," and you contend that this should be changed to read "expenses actually incurred." The bill was purposely framed to deal with receipts and disbursements made within the year for which the tax was to be imposed, and the words "actually paid" were employed advisedly. The same may be said with respect to losses actually sustained and interest actually paid. The theory of the framers of the bill in this respect differs from that which you advocate.

3. You then object that in Clause 1 the bill refers to "net income received;" in Clause 2 it refers to "gross income" without the addition of the word "received;" and in Clause 3, Paragraph 3, it refers to "gross income received," and you comment: "There is here a complete confusion between income and income received, which can only lead to endless complication."

I cannot agree that there is any confusion whatever in this respect. "Gross income" in Clause 2 obviously and necessarily means "gross income received." The tax is imposed by Clause 1 upon the entire net income above five thousand dollars received from all sources during the year. By Clause 2 "such net income" is to be ascertained by deducting from the gross amount of the income from all sources the specified items; and if anybody could question whether that meant "gross income received," his doubt would be removed by the provisions in Paragraph 3 of Clause 3.

Your further statement that "as accountants actively engaged in the audit and examination of a number of varied businesses and enterprises, we unhesitatingly say that the law as framed is absolutely impossible of application," causes me very great surprise. My personal acquaintance with you and a number of the other signers of the letter leads me to the belief that you have underestimated your capacity. Certainly the statement of objections made in your letter is entirely insufficient to support the conclusion which you express.

I am, Respectfully yours,

(Signed) GEO. W. WICKERSHAM,
Attorney General.

NEW YORK, July 21st, 1909.

HON. GEO. W. WICKERSHAM,
Attorney General of the United States,
Washington, D. C.

DEAR SIR :

We have to acknowledge receipt of your letter of July 12th, replying to ours of July 8th.

Our only object in addressing you was to be of assistance in a matter of practical accounting which enters into the proposed law, as to which we believe that our experience specially qualifies us to speak. We have purposely refrained from any reference to the policy involved in the law, with which we as Accountants are not concerned.

The views expressed in your letter of the 12th instant would seem to indicate that you have not fully appreciated the difficulties which will be met with in carrying into effect the provisions of the proposed law as amplified and explained in your letter; and we therefore feel that in justice to ourselves we must refer at greater length to some matters which were only briefly touched upon in our letter of July 8th.

We are glad to have your clear expression as to the intention of the law to deal with Receipts and Disbursements only (presumably on Income Account) and not with Income Earned (or Profits) and Expenditures incurred. Under these circumstances it would seem better to use the term "Receipts on Income Account" and "Disbursements on Income Account" rather than "Income" and "Expense" as the latter terms are more commonly defined and used in relation to Income earned and Expenses incurred. In any case if in Clause 2 "Gross Income" means, as you state it is intended to mean, "Gross Income received" it would certainly be better to say so and thus remove any possible ambiguity.

We note that you refer to the precedent of the Income Tax Law of 1894. We believe that this law was declared unconstitutional before there had been time to experience the difficulties

and uncertainties which any attempt to enforce it, if drawn on the lines of the present bill, would have involved. In this connection we may perhaps point to the precedent of the English Income Tax Law which has stood the test of over half a century. In this case the tax is on Profits which in this country are frequently termed "Net Income"; and the accounts of corporations prepared in the regular course of business for their respective fiscal years are and always have been accepted as the basis of taxation, subject to minor provisions as to rates of depreciation, interest deductions, etc.

Our main criticism of the bill in its present form is that in the large majority of cases it will be impossible of application for the year 1909, as explained in our previous letter, and very difficult and expensive if not altogether impossible in subsequent years.

Railroads perhaps require the simplest form of accounting obtaining among business corporations. These accounts are kept in a form prescribed by the Interstate Commerce Commission and severe penalties can be inflicted for any departure from those forms. They must be kept on a basis not of Receipts and Disbursements but of Earnings, whether collected in cash or not, and of Expenses, whether paid or not, which in both cases accrued during the fiscal year closing on June 30th; the outstanding Income and Expense items uncollected and unpaid running into very large figures and frequently varying considerably in amount between one year and another. While it would be possible to prepare also an account of Receipts and Disbursements, this would involve a great deal of extra work in the compilation of special data and would raise most difficult questions as to the proper distribution between Capital and Income of large payments for stores, the ultimate use of which is not and cannot be known at the time of payment.

Turning now from this which is perhaps the most simple case to that of a large manufacturing concern producing all kinds of finished products out of purchases of ore and other raw materials, an accurate or even approximate statement of Cash Receipts and Disbursements on Income Account is a practical

impossibility at any time. Cash Receipts arising from sales of products can be ascertained without much difficulty beyond requiring considerable extra work. But no system of accounting can give even approximately "the ordinary and necessary expenses actually paid within the year out of Income in the maintenance and operation of its business and properties." Such expenses presumably must include the cost of the goods sold. Into this cost and following it through all the intricate accounting which has been found to be necessary are raw materials actually used in manufacture, labor expended and innumerable items of expense which are taken into costs as they accrue quite irrespective of the date of payment. Very large inventories are carried of materials and supplies which are purchased at one period, paid for at another, and used at all sorts of times, in all sorts of quantities, and for all sorts of purposes, mainly for manufacture into products for sale but to a large extent for additions to or extensions of the plant. Such as are used for the latter purpose are not, as we understand the proposed law, a proper deduction from Gross Income, and yet long before they are used all identity between the materials themselves and the disbursements made for them has been lost. There is in our opinion no method in which any such statement as that called for in the proposed law can be prepared short of an entirely independent and separate set of books, designed to follow each bill paid through to the ultimate destination of the materials or services covered thereby, thus duplicating the present cost of the Accounting Department, and serving no useful purpose whatever. Even if such method were adopted it is very doubtful if it would produce the results required with even approximate accuracy.

Without unduly burdening this letter it is impossible to go into further details here; but the facts must in the opinion of any one familiar with the operations and accounts of a complicated modern manufacturing concern fully justify the conclusions which we expressed in our letter of July 8th, and which we now emphatically endorse. Whether the proposed method is physically impossible, or merely as you state "inconvenient," it will, we think, be generally conceded that it is in the general interest

of the effective administration of laws relating to taxes that they should involve as little inconvenience as possible upon those required to make returns thereunder. The basis for arriving at the amount liable to taxation suggested in our former letter would have the advantage of simplicity, and if the tax is to be a permanent institution, its efficient operation would be greatly facilitated by conformity with regular accounting methods.

We have felt it our duty to protest strongly against the wording of the proposed bill upon the grounds set forth, but our object is to help and not to hinder. If you think any good purpose would be served by our appearing before you and discussing this matter fully with a view to arriving at a satisfactory solution, which we are satisfied can be done, we shall be pleased to hold ourselves at your disposal for this purpose.

Regretting our inability to in any way modify the conclusions already expressed.

We are, Dear Sir,

Yours very truly,

DELOITTE, PLENDER, GRIFFITHS & Co.,
 PRICE, WATERHOUSE & Co.,
 HASKINS & SELLS,
 LYBRAND, ROSS BROS. & MONTGOMERY,
 MARWICK, MITCHELL & Co.,
 NILES & NILES,
 GUNN, RICHARDS & Co.,
 EDWARD P. MOXEY & Co.,
 BARROW, WADE, GUTHRIE & Co.,
 LOOMIS, CONANT & Co.,
 SUFFERN & SON.

OFFICE OF THE ATTORNEY GENERAL,
WASHINGTON, D. C.

July 22, 1909.

MESSRS. DELOITTE, PLENDER, GRIFFITHS & Co.,
New York.

DEAR SIRS :—I have a letter dated the 21st instant, signed by yourself and a number of other firms of accountants, in response to my letter of July 12th, replying to your former letter of July 8th. In your last letter you set forth in somewhat more detail the following proposition :

“ But no system of accounting can give even approximately the
“ ‘ ordinary and necessary expenses actually paid within the year out
“ of income in the maintenance and operation of its business and
“ properties.’ ”

I think the bare statement of that proposition would be received with very great incredulity by most minds. Certainly, I am quite unable to assent to it. However, it is now too late to attempt to recast the corporation tax amendment bill on the basis of such proposition.

Respectfully yours,

(Signed) GEO. W. WICKERSHAM,
Attorney General.

CORPORATION TAX LAW.

SEC. 38. That every corporation, joint stock company or association, organized for profit and having a capital stock represented by shares, and every insurance company, now or hereafter organized under the laws of the United States or of any State or Territory of the United States or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country and engaged in business in any State or Territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed; or if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its Territories, Alaska, and the District of Columbia during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, however, That nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

SECOND. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association or trust company, all interest actually paid by it within the year on deposits;

(fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country as a condition to carrying on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided, that in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska and the District of Columbia (first), all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its Territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its Territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guaranty or reserve funds, shall be treated as being payments required by law to reserve funds.

THIRD. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the col-

lector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company, has its principal place of business, or, in the case of a corporation, joint stock company, or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury shall prescribe, setting forth, (first) the total amount of the paid-up capital stock of such corporation, joint stock company, or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company, within the year by way of dividends upon stock or other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company, within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its Territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its Territories, Alaska and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an

amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its Territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any State or Territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

FOURTH. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company, is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company, has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Revenue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

FIFTH. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem

necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue, shall upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

SIXTH. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such.

SEVENTH. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

EIGHTH. If any of the corporations, joint stock companies or associations, or insurance companies, aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return who makes any false or fraudulent return, or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or to be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission and refund of internal revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the Circuit and District Courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books, as aforesaid shall reside, to compel such attendance, production of books, and testimony by appropriate process.