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Income-tax Department

EDITED BY STEPHEN G. RUSK

Information from Washington indicates that the bureau of internal revenue's present plan contemplates the disposal, at least in that department, of all past years' tax returns by the end of 1927. It is said that to bring about this highly desirable condition the bureau has established a "sixty-day conference unit with very competent men as conferees to expedite settlement of cases in which sixty-day letters have been issued." In addition the bureau is said to be eliminating the auditing of returns which show that an audit would not produce sufficient additional taxes to offset the expense of the examination.

If and when the bureau has only to deal with tax returns of one year there will be a great saving in the cost of reviewing as there will be a great decrease in the number of employees engaged in that work. No doubt there will be an improvement in the personnel of the bureau; deficiencies will be collected sooner and the entire business of assessing and collecting will be more efficient.

There has been nothing so irritating to taxpayers, perhaps, as the uncertainty and suspense they have experienced as to whether or not their federal taxes were fully and finally paid at any time. It is apparent that the commissioner can not know what it has meant to a business man to be uncertain for a period of five years as to the possibility of additional liability of an unknowable amount for federal taxes. The removal of these irritations will probably act beneficially to the treasury as there will not be so much attention centered upon questions of taxation, and consequently less opposition will be developed to well thought out and scientific methods of raising revenue. The citizens have become inured to the imposition of this direct taxation, which is a condition of mind that would have been considered impossible twenty years ago. The vast majority thinks very little about it any longer, but those who are still endeavoring to learn whether or not additional taxes will be required of them for years as remote as 1918 are thinking of taxes a great deal. To them the subject is ever present. They are as a rule important and influential leaders of our people and therefore the most articulate at times when taxation is to be considered.

From many viewpoints it is therefore apparent that the clearing away and disposal by the bureau of all old tax returns will have far-reaching effects.

Although the revenue act of 1926 is three months old, the regulations relating to it have not yet been issued. This is puzzling to onlookers for this law seemed to be well pondered from every angle before it was enacted. It was the result of a great deal of experience with the operation of the preceding tax laws. It was supposed to be the most scientific law that congress could be expected to adopt. All these things being accepted as facts, the writing of the regulations seemed not to present as great difficulties as were heretofore encountered. However, obstacles have confronted the administrative department and the regulations are still in the process of being written. The latest information available is that these regulations (No. 69) are to be issued July first.

An accountant representative of a taxpayer recently had occasion to consult the provisions of the several acts as to the statute of limitations with particular

reference to those bearing on claims for refunds. After hours of study, endeavoring to comprehend all the "ifs," "excepts," "provided thats" and "in case ofs," and after carefully and emphatically marking the parenthetical limitations, he found himself without definite answer to his problem. He consulted an eminent lawyer, and after more hours of study by the two, they solved the problem. Upon asking the lawyer why in the name of sense the intention of the law should be so well secreted in a bundle of language, he received the laughing and somewhat illuminating reply: "The law was written by lawyers for lawyers."

Maybe the writers of the regulations are excusable if a great deal of time is necessary to interpret the language of the act and promulgate regulations that will be sufficiently technical.

SUMMARY OF RECENT RULINGS

Invested capital as a basis for the excess-profits tax is limited to actual contributions for stock and actual accessions in the way of surplus, all valuations being made at the time of acquisition and not being influenced by later fluctuations. (United States district court, Kansas, first division, *Lee Hardware Company* v. *United States.*)

Tax limitation to 20 per cent. of sale price under sec. 311 (b), 1918 act, on profits from sales of mines, oil and gas wells, is as to the ratable proportion of the total tax attributable to such profits. (United States district court, N. D. of Texas, *Fowler* v. *United States.*)

A dividend actually paid in stock is non-taxable, although declared payable in cash, the majority of the stockholders agreeing in advance to receive stock and there being insufficient cash to pay the dividend, notwithstanding that a few stockholders received cash. (United States supreme court, *United States* v. *Davison.*)

A corporation may not deduct as a bad debt or loss, an indebtedness from its sole owner though he was insolvent, the account having been carried as an account receivable and not being charged off as a bad debt until the following year. (Court of claims of United States, *Silvertown Motor Co., Inc.* v. *United States.*)

An indictment for perjury under sec. 125, criminal code, not a revenue law, must be brought within three years, although it alleges in accordance with sec. 1004, *Revised Statutes*, that the offense was committed for the purpose of defrauding the United States, that not being an element of the crime charged. (United States supreme court, *United States* v. *Noveck.*)

Suit may not be brought against a receiver of an insolvent corporation for income tax, etc., without first obtaining leave of the court appointing the receiver. (Circuit court of appeals, 9th circuit, *Merryweather, receiver,* v. *United States.*)

Unexplained loss of corporate records carries strong presumption that they are against interest, and the books of the corporation's bank may be consulted under certain circumstances. (United States district court, Minnesota, third division, *Samuel Rosen and Morris Rosen* v. *United States.*)

TREASURY RULINGS

(T. D. 3859, April 23, 1926)

ARTICLE 1564: Exchange of property.

INCOME TAX—REVENUE ACT OF 1916—DECISION OF COURT OF CLAIMS

1. *Income—Dividends—Exchange of stock for stock—Corporations—Reorganization*

Where stockholders of a corporation organized prior to March 1, 1913, organize a new corporation in another state to take over the business and assets of the old corporation, stockholders of the old

corporation exchanging their stock for a greater number of shares of stock in the new corporation, income is realized under the provisions of the revenue act of 1916 by stockholders to the extent that the market value of the stock received in the new corporation exceeded the March 1, 1913, value of the stock of the old corporation.

2. *Cases followed and distinguished*

United States v. *Phellis* (257 U. S., 156, T. D. 3270 [C. B. 5, 371]); *Cullinan* v. *Walker* (262 U. S., 134, T. D. 3508 [C. B. II–I, 51; C. B. II–2, 55]); *Marr* v. *United States* (268 U. S., 536, T. D. 3755 [C. B. IV–2, 116]) followed. *Weis* v. *Stearn* (265 U. S., 242, T. D. 3609 [C. B. III–2, 51]) distinguished.

The following decision of the United States court of claims in the case of *Weis* v. *United States* is published for the information of internal-revenue officers and others concerned.

COURT OF CLAIMS OF THE UNITED STATES

Andrew L. Weis v. *The United States*

[March 8, 1926]

BOOTH, judge, delivered the opinion of the court: This is a suit to recover income taxes. No jurisdictional question is involved. The plaintiff was financially interested to a great extent in three manufacturing corporations and this fact renders it necessary to consider the relationship of all three to each other and to the return made by the plaintiff for the purpose of income taxation.

The Weis Manufacturing Co. is a Michigan corporation, engaged in manufacturing filing cabinets, bookcases, card cabinets, etc. The plaintiff was its president and general manager, also the largest single stockholder therein. The company had been incorporated prior to 1911, was a close corporation owned exclusively by the plaintiff, his five brothers and two sisters, and was doing a prosperous business. In 1911, John R. Van Wormer, an applicant for a patent covering a fiber container, a device designed by the inventor to supplant the use of glass milk bottles, interested the plaintiff in the exploitation of the same. Van Wormer had incorporated a company in the state of Ohio for this express purpose, but had not attained success. The plaintiff, as well as all the remaining holders of stock in the Weis Manufacturing Co., joined Van Wormer in the organization and incorporation under the laws of Michigan of the Weis-Van Wormer Co. This occurred about March 25, 1911.

The new company was incorporated with an authorized capital stock of $30,000, divided into 3,000 shares of the par value of $10 each. To this company Van Wormer assigned all his patent rights and the assets of his Ohio corporation for a consideration of one-fourth of its capital stock, it being further agreed that the remaining shares of stock should be issued to the stockholders of the Weis Manufacturing Co., in consideration of which financial assistance was to be rendered by the latter to the Weis-Van Wormer Co. in developing and marketing the fiber container. These agreements were observed and the stock issued in pursuance thereof.

The Weis-Van Wormer Co. did not succeed. On December 29, 1914, it was indebted to the Weis Manufacturing Co. in at least the sum of $50,549.74. Van Wormer had sold his interest in the company and retired therefrom, and the entire control of its business, including the patent for the container, had on February 24, 1914, been by express contract assigned to the Weis Manufacturing Co. for the sum of $25 per annum. On December 29, 1914, the stockholders of the Weis-Van Wormer Co. unanimously adopted a resolution to pay to the Weis Manufacturing Co. the sum of $75,000 to be released from the contract of February 24, 1914. This sum was to be paid in cash or in stock of a new company to be thereafter organized to take over all the assets of the Weis-Van Wormer Co. The resolution further provided for the organization of the new company and the sale to it of all the assets of the Weis-Van

Wormer Co. for $1,000,000, to be paid in stock of the new company when the assets were turned over. The new company was to be known as the Weis Fibre Container Corporation.

The Weis Fibre Container Corporation was on March 4, 1915, incorporated under the laws of South Dakota. The authorized capital stock was $2,000,000, divided into 80,000 shares of the par value of $25 each. In 1916 the assets of the Weis-Van Wormer Co. were turned over as agreed; but the corporation, while dormant, was not dissolved until April 11, 1918. Three thousand shares of stock of the new corporation, of the par value of $75,000, were issued to the stockholders of the Weis Manufacturing Co., as per agreement; 20,000 shares of the par value of $500,000 were likewise issued direct to the stockholders of the Weis Manufacturing Co.; and the entire 23,000 shares divided among its stockholders in proportion to their holdings in the Weis-Van Wormer Co., the stockholders of the Weis-Van Wormer Co. and the Weis Manufacturing Co. being identical at the time. This was done as a matter of convenience. The remaining 20,000 shares issued to the stockholders of the Weis-Van Wormer Co. were held in escrow until the stock of the new corporation paid a dividend of 6 per cent. This event never transpired, and the stock was eventually turned back into the treasury. Of the remaining 37,000 shares, a sufficient number were sold to the public at $25 per share to bring into the treasury of the corporation $800,000 in cash, less the commission paid for effectuating their sale.

The plaintiff owned 1,460 shares of the capital stock of the Weis-Van Wormer Co. and was to receive in exchange therefor 19,461 shares of the capital stock of the Weis Fibre Container Corporation, or an exchange on the ratio of 13⅓ per 1. He actually received certificates for one-half of 19,461, or 9,730½ shares, the remaining half being held by the corporation in escrow. Plaintiff in making his return for income taxation for the year 1916 valued this stock at $1.26 per share. The commissioner of internal revenue declined to accept the valuation and assessed an additional tax against the plaintiff of $16,241.40, the commissioner insisting that under the revenue law the plaintiff made a profit by the transaction of the difference between the market value of the 1,460 shares of stock which the plaintiff owned in the Weis-Van Wormer Co. on March 1, 1913, which the plaintiff concedes to be $13.33⅓ per share, and the market value of the stock he acquired in the Weis Fibre Container Corporation at the time he acquired it, reaching a conclusion that inasmuch as $800,000 worth of the stock of the latter company had been absorbed by the public at $25 per share during the year 1916, that was its market value.

The plaintiff, after having an adverse ruling on his applications for abatement and refund, paid under protest the additional tax of $16,241.40, and $920.34 interest, making a total of $17,161.74, and it is for the recovery of this sum, with interest, the present suit is brought. The pertinent parts of the revenue act of 1916 are sections 1, 2 and, 3 (39 Stat., 756). They are quite familiar and we need not set them forth.

The plaintiff contends that the case is within the decision of the supreme court in *Weis* v. *Stearn* (265 U. S., 242). That to all real intent and purpose it was but a reorganization or exchange of their stock in the old corporation for stock in the new, both having the same assets, and hence no taxable gain. With this contention we are unable to agree. Discarding form and observing substance, the findings clearly show that the plaintiff exchanged 1,640 shares of stock in the Weis-Van Wormer Co., valued as of March 1, 1913, at $13.33⅓ per share, for 19,461 shares of stock in the Weis Fibre Container Corporation, selling on the market in 1916 at $25 per share. The findings, we think, also bring this case within the following cases decided by the supreme court: *United States* v. *Phellis* (257 U. S., 156); *Cullinan* v. *Walker* (262 U. S., 134); *Marr* v. *United States* (268 U. S., 536). The stock of the Fibre Container Corporation which ultimately reached the plaintiff as a shareholder of the Weis Manufacturing Co. was a portion of the stock paid to the Weis Manufacturing Co. in liquidation of the liabilities of the Weis-Van Wormer to the Weis Manufacturing Co. and by the latter distributed among its shareholders as a dividend.

(T. D. 3860, April 23, 1926)

ARTICLE 141: Losses

INCOME TAX—REVENUE ACT OF 1918—DECISION OF COURT

1. *Income—Deduction—Loss*

A loss sustained to an automobile maintained for personal use by damage due to the unauthorized use and faulty driving by a chauffeur is not deductible from income of the owner under section 214(6) of the revenue act of 1918.

2. *Same—Theft*

The unauthorized use and resulting damage to an automobile by a chauffeur is not a loss arising from theft within the meaning of section 214(6) of the revenue act of 1918.

3. *Statutory construction—Ejusdem generis*

Under the rule of ejusdem generis the words "other casualty" used in section 214(6) of the revenue act of 1918 must be construed as applicable only to casualties of the same general nature or class as those particularly enumerated.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

George L. Shearer, plaintiff, v. *Charles W. Anderson, collector of internal revenue, defendant*

[March 29, 1926[

GODDARD, district judge: This is a motion by plaintiff for judgment on the pleadings, on the ground that the complaint does not state facts sufficient to constitute a cause of action. The facts set forth in the complaint are deemed to be admitted for the purpose of this motion, and are as follows:

Mr. Shearer, the plaintiff, in his federal income-tax return for the year 1920, claimed as a deduction from his gross income the sum of $1,252, representing a loss sustained by him due to damage to an automobile maintained by him for personal use, which resulted from the overturning of the automobile on an icy roadway, when the temperature was about zero, in an early morning of January, 1920. The automobile was, at the time, in the possession of Mr. Shearer's chauffeur, who had taken it from the garage for his own use without Mr. Shearer's knowledge and against his orders. The loss was not compensated for by insurance or otherwise.

The plaintiff contends that the amount he paid for repairing the automobile was deductible under section 214(6) of the revenue act of 1918, which provides, after making various provisions in regard to losses sustained in transactions entered into for profit:

"(6) Losses sustained during the taxable year of property not connected with the trade or business (but in the case of a nonresident alien individual only property within the United States) if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;. . . ."

The collector contends that the loss herein did not arise from "theft" or from any "other casualty" within the meaning of the statute.

Taking up first whether a "theft" as contemplated under the statute has been committed, it is clear that the unauthorized use of Mr. Shearer's automobile by his chauffeur was not a "theft" at common law, for there was no intention on the chauffeur's part to take permanent possession of the car. In *Van Vochten* v. *American E. F. Insurance Co.* (239 N. Y., 303, 305), Judge Cardoza, writing for a unanimous court, said:

"Apart from this statute (referring to the New York statute making the unauthorized use of another's car theft), the misuse of plaintiff's car by the proprietor of the garage would not constitute a larceny, since there was lacking the felonious intent to appropriate another's property permanently and wholly"; and the court also stated in effect that congress did not desire that the same act would be theft within the purview of the statute if committed in New York and a mere trespass or conversion if committed in Massachusetts or some other state. Such a construction would, in the words of the supreme

court in *United States* v. *Childs, trustee* (266 U. S., 304), "abridge or control a federal statute by a local law or custom and take from it uniformity of operation."

Was the loss such as to come within the words "other casualty" mentioned in this section 214? The statute states that the loss must arise from "fires, storms, shipwreck, or other casualty. . . ." By the rule of "ejusdem generis," where general words follow the enumeration of particular classes of things, the general words should be construed as applicable only to those of the same general nature or class as those enumerated. (*Merchants National Bank* v. *United States*, 42 Ct. Cl., 6, 19). The rule is based on the reason that if the legislature had intended the general words to be used in their unrestricted sense, there would have been no mention of the particular classes.

The proximate cause of the damage to the car was not a storm or similar casualty, such as destruction by lightning or an earthquake; the proximate cause was the faulty driving on the part of the chauffeur over an icy road, and the overturning of the automobile. It seems to me that the storm was no more the proximate cause of the loss here than where a person carelessly drops his valuable watch on the ice and damages it, or where an automobile is carelessly driven and skids on a pavement wet from rain. None of these seem to me to be such as to come within the meaning of the words "other casualty" mentioned in section 214. No cases supporting a contrary view have been brought to my attention and I have not found any.

Therefore, I must hold that the complaint does not set forth facts sufficient to constitute a cause of action and grant the defendant's motion for judgment on the pleadings.

(T. D. 3867, May 21, 1926)

ARTICLE 1211: Examination of return and determination of tax by the commissioner

EXAMINATION OF INCOME-TAX RETURNS AND DETERMINATION OF TAX BY THE COMMISSIONER

Article 1211, *Regulations 65*, as amended by treasury decision 3708 [C. B. IV–1, 69], superseded.

It is considered advisable to initiate certain changes in administrative procedure with respect to the handling of protests and to the preliminary inspection and classification of income-tax returns.

The following procedure for the examination of income-tax returns and the determination of tax by the commissioner is accordingly prescribed:

1. Effective immediately, treasury decision 3708 is rescinded.

2. Effective immediately, article 1211 of *Regulations 65* is amended to read as follows:

All returns will, as soon as practicable, be given a preliminary inspection in the offices of collectors, and taxpayers will be immediately notified by the collector of changes in tax liability due to mathematical errors found in the course of such inspection. Immediately thereafter all returns, except returns made on form 1040A and such other returns as the collector may be authorized by the commissioner to audit, will be surveyed by revenue agents detailed from the offices of supervising internal-revenue agents or internal-revenue agents in charge and classified as (*a*) returns properly prepared which should not require further audit, (*b*) returns which can be adjusted by office audit, and (*c*) returns which require an investigation of the books and records of the taxpayer. All such returns will be forwarded to Washington, class (*a*) returns for review and filing and class (*b*) and (*c*) returns for reference to the appropriate field division for audit.

Upon the completion, under the supervision of a supervising internal-revenue agent or internal-revenue agent in charge, of a field investigation or of an office audit which discloses that a deficiency apparently exists, the taxpayer will be notified of the result of the investigation or audit and furnished with a copy of the examining officer's report or a statement of changes proposed by the auditor. A protest which the taxpayer may desire to submit in ref-

erence to such investigation or audit must be filed, within 30 days from the date of such letter of notification, with the office of the field division. The supervising internal-revenue agent or internal-revenue agent in charge will cause the protest of the taxpayer to be carefully heard, provided that request for a hearing is made in the protest. Any supplemental statement which the taxpayer may desire to submit in connection with a protest involving such investigation or audit must also be submitted to the office of the field division concerned. Protests or supplemental statements filed with the bureau at Washington in connection with such investigation or audit will, before consideration thereby, be referred to the proper supervising internal-revenue agent or internal-revenue agent in charge.

After careful consideration has been given to the taxpayer's protest, if protest is filed, or, if the period of 30 days has elapsed and no protest has been received, the supervising internal-revenue agent or internal-revenue agent in charge will forward the statement of the office auditor or the report of the examining agent, together with all statements from the taxpayer, and conference reports with his recommendation to Washington for review. The case will then be reviewed in the income-tax unit at Washington, and if the unit agrees with the findings of the agent, the taxpayer will be notified by letter and afforded an opportunity for a hearing in the unit at Washington. If upon further consideration it appears that a deficiency of tax exists, the taxpayer will be notified by registered letter in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals.

In case the income-tax unit at Washington is of the opinion that a different deficiency exists from that recommended by the supervising internal-revenue agent or internal-revenue agent in charge, whether or not a protest has been filed, taxpayer will be notified by letter that a different deficiency from that shown in the revenue agent's report appears to exist. At the same time that such letter is mailed to the taxpayer, a copy thereof will be furnished to the proper supervising internal-revenue agent or internal-revenue agent in charge. Within 30 days from the date of such letter the taxpayer may file with the supervising internal-revenue agent or internal-revenue agent in charge a protest against the determination of the deficiency. After consideration, the supervising internal-revenue agent or internal-revenue agent in charge will forward all statements by the taxpayer and any conference reports together with his recommendations to the income-tax unit at Washington for review. The unit at Washington will cause the protest of the taxpayer to be carefully heard, provided that request for hearing in Washington is made in the protest filed with the supervising internal-revenue agent or internal-revenue agent in charge. If upon further consideration it appears that a deficiency of tax exists, final determination thereof will be made and the taxpayer will be notified by registered mail in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals.

An immediate assessment without prior notice to the taxpayer may be made under section 279(a) if it appears in any case that the collection of a deficiency would be jeopardized by delay.

In special cases where by reason of the filing of a consolidated return or for any other reason it is impracticable that the field investigation be made under the supervision of one of the internal-revenue agents in charge, the commissioner may direct that the field investigation be made by such revenue agents, special agents, or auditors as he may specially designate. In such cases, the return will be audited in the income-tax unit at Washington, after receipt of the report of the field investigation. The taxpayer will be furnished with a copy of the report of the field investigation and notified by letter of any deficiency which appears to exist. Within 30 days from the date of the notification letter the taxpayer may file in the income-tax unit at Washington a protest against the determination of the deficiency. If no protest is filed

within the prescribed time, final determination of the deficiency will be made and the taxpayer will be notified thereof by registered mail, in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals. If a protest is filed, it will be considered in the income-tax unit at Washington, and hearing will be granted if requested in the protest. If it appears thereafter that a deficiency exists, final determination of the deficiency will be made and the taxpayer will be notified thereof by registered mail, in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals.

As to those returns which are authorized to be retained in the office of the collector for audit, the taxpayer will be notified by letter upon the completion of the audit of any deficiency which appears to exist. Within 30 days from the date of the letter of notification the taxpayer may file with the collector a protest against the determination of the deficiency. If no protest is filed within the prescribed time, final determination will be made and the taxpayer will be notified by registered mail in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals. If a protest is filed, it will be considered in the collector's office and a hearing will be granted if requested in the protest. If the taxpayer and the collector are unable to agree respecting the amount of the deficiency, the return and the complete file pertaining thereto will be forwarded by the collector to the supervising internal-revenue agent or internal-revenue agent in charge for consideration. The taxpayer will be advised by letter of the result of such consideration and may, within 30 days from the date of such letter, request a hearing before the supervising internal-revenue agent or internal-revenue agent in charge. After full consideration has been given to the taxpayer's contentions the complete file will be forwarded, with the agent's recommendations, to the income-tax unit at Washington for review in accordance with the procedure outlined herein for the review of reports of field investigations. If, upon further consideration, it appears that a deficiency of tax exists, final determination thereof will be made and the taxpayer will be notified by registered mail in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals.

If in the course of any field investigation it appears that a wilful attempt has been made to evade tax, the report of the investigation will be forwarded immediately to the commissioner at Washington. No copy of the report will be furnished to the taxpayer by the agent. After completion of the audit in the income-tax unit at Washington the taxpayer will be notified of such taxes and penalties as appear to be due, and will be furnished with a statement showing the computation of tax and penalties. At the same time that such letter is mailed to the taxpayer, a copy thereof will be furnished to the proper supervising internal-revenue agent or internal-revenue agent in charge. Within 30 days from the date of such letter the taxpayer may file with the supervising internal-revenue agent or internal-revenue agent in charge a protest against the determination of the deficiency. The supervising internal-revenue agent or internal-revenue agent in charge shall cause full consideration to be given to any protest against the determination of any deficiency of tax, but any hearing on a protest against a proposal to assert the ad valorem fraud penalty will be under the supervision of the general counsel of the bureau of internal revenue, whose recommendation in regard to the assertion of the ad valorem fraud penalty will be obtained prior to final determination of the deficiency. After consideration the supervising internal-revenue agent or internal-revenue agent in charge will forward any statements from the taxpayer with his recommendations to the income-tax unit at Washington for review. The unit at Washington will cause the protest of the taxpayer to

be carefully heard, provided that request for hearing in Washington is made in the protest filed with the supervising internal-revenue agent or internal-revenue agent in charge. Thereafter final determination of the deficiency and of the penalty, if any, will be made and the taxpayer will be notified by registered mail, in accordance with the provisions of section 274(a) of the statute, allowing 60 days after such notice is mailed (not counting Sunday as the sixtieth day) for the taxpayer to file a petition with the board of tax appeals.

If in any case the taxpayer acquiesces in the tentative or final determination of the deficiency, the form consenting to assessment which will be forwarded with the letter of notification should be executed by the taxpayer and returned in order that assessment may be made forthwith.

A letter of protest must cover all items which the taxpayer questions and may be accompanied by a statement of additional facts or by a brief, or both. It must be filed in triplicate, and must contain the following information:

(*a*) The name and address of the taxpayer (in the case of an individual the residence, and in the case of a corporation the principal office or place of business); (*b*) in the case of a corporation the name of the state of incorporation; (*c*) the designation by date and symbol of the letter advising of the tentative deficiency with respect to which the protest is made; (*d*) the designation of the year or years involved and a statement of the amount of tax in dispute for each year; (*e*) an itemized schedule of the findings to which the taxpayer takes exception; (*f*) a summary statement of the grounds upon which the taxpayer relies in connection with each exception; and (*g*) in case the taxpayer desires a hearing, statement to that effect.

Letters of protest and accompanying statements of fact, if any, must be executed by the taxpayer under oath.