

12-1924

Income-tax Department

Stephen G. Rusk

Follow this and additional works at: <https://egrove.olemiss.edu/jofa>



Part of the [Accounting Commons](#), and the [Taxation Commons](#)

Recommended Citation

Rusk, Stephen G. (1924) "Income-tax Department," *Journal of Accountancy*. Vol. 38: Iss. 6, Article 7.
Available at: <https://egrove.olemiss.edu/jofa/vol38/iss6/7>

This Article is brought to you for free and open access by the Archival Digital Accounting Collection at eGrove. It has been accepted for inclusion in Journal of Accountancy by an authorized editor of eGrove. For more information, please contact egrove@olemiss.edu.

Income-tax Department

EDITED BY STEPHEN G. RUSK

From an apparently authentic source is derived the information that congress is receiving many and emphatic protests against the publication of income-tax returns "from the small taxpayer in small communities where the neighbors have discovered his income to be less than they had been led to believe." After having contemplated the reasons assigned by congress for the enactment of the publicity provisions of the revenue act of 1924, it would seem that protests from the small taxpayer must impress some members of congress as being ingratitude from those whose battle they fought so valiantly. Perhaps nothing has so focused the public eye upon the subject of income taxes as has the publication of the lists of taxes paid by individuals and corporations, and the reaction of the public mind as to this publicity must be quite contrary to that which was anticipated.

The voters of Florida have just adopted by a great majority a constitutional amendment providing that

No tax upon inheritances or upon income of residents or citizens of this state shall be levied by the state of Florida or under its authority.

It would not, perhaps, be accurate to link up the publicity of federal taxes to the result of the vote in Florida, but it is difficult not to speculate upon the probable fate of the sixteenth amendment were it to be resubmitted to the electorate.

SUMMARY OF RECENT RULINGS

A taxpayer found guilty of making false and fraudulent return and previously penalized therefor by the bureau of internal revenue was nevertheless indicted and sentenced. This action was held not to be in error by the United States court of appeals (*Slick v. United States*).

A contribution to Palestine Foundation Fund was allowed as a deduction (board of tax appeals—Appeal of Aaron and Morris Lubell).

Where it may be determined from the face of the pleadings that there was a hearing on the merits of a given matter, in the absence of fraud or mistake, the court cannot review the matter; that a succeeding commissioner cannot overrule the decision of his predecessor, unless such decision was in law erroneous or tainted with fraud (*Spencer Penrose v. Mark A. Skinner, Collector*—United States district court—district of Colorado).

In a court decision a corporation which had acquired its sole assets from a partnership, issuing its stock therefor, was held to be liable for the taxes assessed against the partnership, in a case where the agreement by the corporation, though not in writing, was sufficiently comprehensive to make it obligated for the debts of the partnership (United States district court for southern district of Georgia, western division, *in re W. J. Marshall Company, bankrupt*).

Books, papers and records of third persons may be examined by any revenue agent or inspector where they have a hearing upon any matter required to be included in the return of any taxpayer, and the pocket warrant held by them is sufficient authorization (*It 2078*).

March 1, 1913, value as basis of determining loss upon sale of property, though said value was greater than cost was held under revenue act of 1918 to be proper basis for such determination (United States circuit court of appeals for third district—*Ludington v. McCaughn*).

Income-tax Department

TREASURY RULINGS

(T. D. 3638, September 27, 1924)

Income tax—Inspection of returns

Regulations governing the inspection of returns of individuals, partnerships, estates, trusts, corporations, associations, joint-stock companies, and insurance companies, made pursuant to the requirements of section 2, tariff act of 1913, title I, revenue act of 1916, title II, revenue act of 1917, titles II and III and section 1000, title X, revenue act of 1918, titles II and III and section 1000, title X, revenue act of 1921 and title II and section 700, title VII, revenue act of 1924—Former regulations bearing on the same subject superseded

Section 2 of the tariff act of October 3, 1913, imposes an income tax on individuals, corporations, joint-stock companies or associations, and insurance companies, and paragraph G (d) of said section provides:

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: *Provided*, That any and all such returns shall be open to inspection only upon the order of the president, under rules and regulations to be prescribed by the secretary of the treasury and approved by the president: . . .

Title I of the revenue act of 1916 imposes an income tax on individuals, estates, trusts, corporations, joint-stock companies, associations, and insurance companies, and section 14 (b) of said title provides:

When the assessment shall be made, as provided in this title, 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: *provided*, that any and all such returns shall be open to inspection only upon the order of the president, under rules and regulations to be prescribed by the secretary of the treasury and approved by the president: . . .

Title II of the revenue act of 1917 imposes a war excess-profits tax on individuals, partnerships, corporations, joint-stock companies, associations, and insurance companies, and section 212 of said title provides:

That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this title are hereby extended and made applicable to all the provisions of this title and to the tax herein imposed, and all provisions of title I of such act of September eighth, nineteen hundred and sixteen, as amended by this act, relating to returns and payment of the tax therein imposed, including penalties, are hereby made applicable to the tax imposed by this title.

Title II of the revenue act of 1918, title II of the revenue act of 1921, and title II of the revenue act of 1924 impose an income tax on individuals, estates, trusts, corporations, associations, joint-stock companies, and insurance companies, and section 257 of each of said titles provides that returns—

. . . upon which the tax has been determined by the commissioner shall constitute public records; but they shall be open to inspection only upon order of the president and under rules and regulations prescribed by the secretary and approved by the president: . . .

Title III of the revenue act of 1918 and title III of the revenue act of 1921 impose a war-profits and excess-profits tax on corporations, associations, joint-stock companies, and insurance companies, in addition to other taxes imposed by such acts, and section 336 of each of said titles provides:

That every corporation, not exempt under section 304, shall make a return for the purposes of this title. Such returns shall be made, and the taxes imposed by this title shall be paid, at the same times and places, in the same manner, and subject to the same conditions, as is provided in the case of returns and payment of income tax by corporations for the purposes of title II, and all the provisions of that title not inapplicable, including penalties, are hereby made applicable to the taxes imposed by this title.

Section 1000, title X, of the revenue act of 1918, imposes on corporations, associations, joint-stock companies, and insurance companies a special excise tax with respect to carrying on or doing business, and subdivision (d) of said section provides:

Section 257 shall apply to all returns filed with the commissioner for purposes of the tax imposed by this section.

Section 1000, title X, of the revenue act of 1921, imposes on corporations, associations, and joint-stock companies a special excise tax with respect to carrying on or doing business, and subdivision (c) of the said section provides:

Section 257 shall apply to all returns filed with the commissioner for purposes of the tax imposed by this section.

Section 700, title VII, of the revenue act of 1924 imposes on corporations, associations, and joint-stock companies a special excise tax with respect to carrying on or doing business, and subdivision (c) of the said section provides:

Section 257 shall apply to all returns filed with the commissioner for purposes of the tax imposed by this section.

Pursuant to these provisions of law the president orders that returns of individuals, partnerships, estates, trusts, corporations, associations, joint-stock companies, and insurance companies filed under the provisions of section 2 of the tariff act of October 3, 1913, title I of the revenue act of 1916, title II of the revenue act of 1917, titles II and III and section 1000, title X, of the revenue act of 1918, titles II and III and section 1000, title X, of the revenue act of 1921, and title II and section 700, title VII of the revenue act of 1924 shall be open to inspection in accordance and upon compliance with the following rules and regulations:

1. These regulations deal only with inspection of returns in so far as the statutes expressly require the approval of the president of regulations on this subject. Other uses to which returns may be lawfully put, without action by the president, are not covered by these regulations.

2. The word "corporation," when used alone herein shall, unless otherwise indicated, include corporations, associations, joint-stock companies, and insurance companies. The word "return," when so used shall, unless otherwise indicated, include income and profits tax returns, and also special excise tax returns of corporations filed pursuant to section 1000, title X, of each of the revenue acts of 1918 and 1921, and pursuant to section 700 of title VII of the revenue act of 1924.

3. Written statements filed with the commissioner of internal revenue designed to be supplemental to and to become a part of tax returns shall be subject to the same rules and regulations as to inspection as are the tax returns themselves.

4. Except as hereinafter specifically provided, the commissioner of internal revenue may, in his discretion, upon written application setting forth fully the reasons for the request, grant permission for the inspection of returns in accordance with these regulations. The officers and employees of the treasury department whose official duties require inspection of returns, and the solicitor of internal revenue, may inspect any such returns without making such written application.

Income-tax Department

5. The return of an individual shall be open to inspection (a) by the person who made the return, or by his duly constituted attorney in fact; (b) if the maker of the return has died, by the administrator, executor, or trustee of his estate, or by the duly constituted attorney in fact of such administrator, executor, or trustee; and (c) in the discretion of the commissioner of internal revenue, by any heir at law or next of kin of such deceased person, upon a showing that such heir at law or next of kin has a material interest which will be affected by information contained in the return, or by the duly constituted attorney in fact of such heir at law or next of kin.

6. A joint return of a husband and wife shall be open to inspection (a) by either spouse for whom the return was made, upon satisfactory evidence of such relationship being furnished, or by his or her duly constituted attorney in fact; (b) if either spouse has died, by the administrator, executor, or trustee of his or her estate, or by the duly constituted attorney in fact of such administrator, executor, or trustee; and (c) in the discretion of the commissioner of internal revenue, by any heir at law or next of kin of such deceased spouse, upon a showing that such heir at law or next of kin has a material interest which will be affected by information contained in the return, or by the duly constituted attorney in fact of such heir at law or next of kin.

7. The return of a partnership shall be open to inspection (a) by any individual who was a member of such partnership during any part of the time covered by the return upon satisfactory evidence of such fact being furnished, or by his duly constituted attorney in fact; (b) if a member of such partnership during any part of the time covered by the return has died, by the administrator, executor, or trustee of his estate, or by the duly constituted attorney in fact of such administrator, executor, or trustee; and (c) in the discretion of the commissioner of internal revenue, by any heir at law or next of kin of such deceased person upon a showing that such heir at law or next of kin has a material interest which will be affected by information contained in the return, or by the duly constituted attorney in fact of such heir at law or next of kin.

8. The return of an estate shall be open to inspection (a) by the administrator, executor, or trustee of such estate, or by his duly constituted attorney in fact; and (b) in the discretion of the commissioner of internal revenue by any heir at law or next of kin of the deceased person whose estate is being administered upon a showing of a material interest which will be affected by information contained in the return, or by the duly constituted attorney in fact of such heir at law or next of kin.

9. The return of a trust shall be open to inspection (a) by the trustee or trustees, or the duly constituted attorney in fact of such trustee or trustees; (b) by any individual who was a beneficiary under such trust during any part of the time covered by the return upon satisfactory evidence of such fact being furnished, or by his duly constituted attorney in fact; (c) if any individual who was a beneficiary of such trust during any part of the time covered by the return had died, by the administrator, executor, or trustee of his estate, or by the duly constituted attorney in fact of such administrator, executor, or trustee; and (d) in the discretion of the commissioner of internal revenue by any heir at law or next of kin of such deceased person upon a showing that such heir at law or next of kin has a material interest which will be affected by information contained in the return, or by the duly constituted attorney in fact of such heir at law or next of kin.

10. The return of a corporation shall be open to inspection by the president, vice president, secretary, or treasurer of such corporation, or, if none, by any of its principal officers, upon satisfactory evidence of identity and official position.

11. When the head of an executive department (other than the treasury department), or any other United States government establishment, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the secretary of the treasury, be permitted upon written application to him by the head of such executive department or other government establishment. The application must be signed by such head and

must show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the one it is desired shall inspect the return. When the head of a bureau or office in the treasury department, not a part of the internal revenue bureau, desires to inspect a return in connection with some matter officially before him, other than an income, profits tax, or corporation excise tax matter, the inspection may, in the discretion of the secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

12. In the case of returns or copies thereof furnished by the department for use in legal proceedings, only such inspection as necessarily results from such use is permitted.

13. Except as provided in paragraph 12, returns may be inspected only in the office of the commissioner of internal revenue, Washington, D. C.

14. A person who, under these regulations, is permitted to inspect a return may make and take a copy thereof or a memorandum of data contained therein.

15. By section 3167, revised statutes, as amended by the revenue act of 1918, and reenacted without change in section 1311 of the revenue act of 1921 and in section 1018 of the revenue act of 1924, it is made a misdemeanor for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures, appearing in any income return, which misdemeanor is punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding one year or both, at the discretion of the court, and if the offender be an officer or employee of the United States, by dismissal from office or discharge from employment.

16. All former regulations issued with the approval of the president in respect of inspection of returns are hereby withdrawn.

17. These regulations shall remain in force until expressly withdrawn or overruled.

EXECUTIVE ORDER—INSPECTION OF INCOME-TAX RETURNS

Pursuant to authority conferred upon the president by paragraph G (d), section 2, of the tariff act of October 3, 1913; section 14 (b), title I, of the revenue act of 1916; section 212, title II, of the revenue act of 1917; section 257, title II, section 336, title III, and section 1000, title X, of the revenue act of 1918; section 257, title II, section 336, title III, and section 1000, title X, of the revenue act of 1921; and section 257, title II, and section 700, title VII, of the revenue act of 1924, *it is hereby ordered* that tax returns filed under section 2 of the tariff act of October 3, 1913; title I of the revenue act of 1916; title II of the revenue act of 1917; titles II and III and section 1000, title X, of the revenue act of 1918; titles II and III and section 1000, title X, of the revenue act of 1921; and title II and section 700, title VII, of the revenue act of 1924, shall be open to inspection in accordance and upon compliance with rules and regulations prescribed by the secretary of the treasury and approved by me, bearing even date herewith.

CALVIN COOLIDGE.

The White House, September 27, 1924.