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Income-tax Department

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This month, because of pressure of more important matters for space in THE JOURNAL OF ACCOUNTANCY, we publish only three treasury decisions. At this date the subject of income and profits taxes causes some slight but only temporary weariness to those who of necessity must contemplate it and for that reason, we believe, the publishing of little upon the subject will be hailed approvingly.

The decision setting forth the rules governing inspection of taxpayers' returns is interesting and worthy of study, as many taxpayer clients feel that too much information is required by the government tax returns. Many successful business men are well aware of the adage that "silence is golden"; their whole business policy is built upon that foundation, and it is quite a wrench to the whole fabric when they are required to set down upon a return so many of what they consider their "secrets." This does not mean that they necessarily have faults to conceal or that there is anything unworthy in their business history—it only means that giving forth such information is evil. However, the government in its regulations has hedged about the returns proper safeguards so that even these may see that their rights are not disregarded and that only those who would be entitled under any consideration to do so have access to the returns.

TREASURY RULINGS.

(T. D. 3274—January 24, 1922.)

Munitions manufacturer's tax—Decision of court.

1. MUNITIONS MANUFACTURER'S TAX—SUBCONTRACTOR—SALE OR DISPOSITION OF MUNITIONS.

"A" company had a contract for the sale of shrapnel shells to the Russian government and sublet to "B" company a contract for making the shell fuses. "B" company entered into a contract with "D" company whereby "B" company agreed to furnish "D" company certain brass ingots, and the latter agreed to mold the metal into small castings which were to be united by "B" company with other parts to make a complete fuse, the materials and castings molded therefrom to remain the property of "B" company at all times. For this service "D" company was to be paid a specified price per pound. Pursuant to the contract, "D" company molded and delivered to "B" company a large number of castings. *Held*, that the "D" company was a manufacturer of munitions and its conduct constituted a "sale or disposition" of munitions within the meaning of title III of the revenue act of 1916, imposing a tax upon the net profits received or accrued from the sale or disposition of "any part" of fuses by any person manufacturing the same.

2. SAME.

The tax is imposed upon the business of manufacturing and is measured by the profits received upon the sale or disposition of the munitions manufactured.

3. JUDGMENT OF LOWER COURT.

Judgment of the United States district court for the southern district of Ohio, western division, in the case of *Dayton Brass Castings Co. v. Gilligan* (267 Fed., 872) affirmed.

The following decision of the United States Circuit Court of Appeals for the Sixth Circuit in the case of *Dayton Brass Castings Co. v. Gilligan,*

collector, affirming the United States District Court for the Southern District of Ohio, Western Division (267 Fed., 872), is published for the information of internal revenue officers and others concerned.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Dayton Brass Castings Co., plaintiff in error, v. A. C. Gilligan, collector of internal revenue, defendant in error.

WRIT of error to the United States District Court for the Southern District of Ohio, Western Division.

DENISON, Circuit Judge: In May, 1915, the Canadian Car & Foundry Co. had a contract for the sale of shrapnel shells to or for the use of the Russian government, and had sublet to a machine company at Dayton a contract for making the fuses which were to be parts of the completed shells. The machine company then entered into a contract with the Dayton Brass Castings Co., by which the castings company was to receive from the machine company brass ingots and put the same through its foundry, molding the same into small castings, which were, by the machine company, to be united with other parts to complete a fuse. For this service the castings company was to receive a specified price per pound. This contract was carried on during the year 1916.

By the provisions of title III of the act of September 8, 1916 (39 Stat., 780), and known as the munitions manufacturer's tax, a tax was imposed upon every person manufacturing (among other things) "any part of" fuses, the tax to be 12½ per cent. of the entire net profits actually received or accrued during the year from the sale or disposition of such articles manufactured within the United States. Under this provision the commissioner of internal revenue imposed a tax upon the castings company, which paid the tax under protest, and brought this suit against the collector to recover the amount paid. The court below heard the case, by stipulation, without a jury, and made a finding of facts, and entered judgment for defendant.

Two propositions were considered in the court below. One was that since plaintiff had to do with only one part of the fuse, it was not a manufacturer within the meaning of the act. In this court, plaintiff does not make this contention, but recognizes the applicability of the decisions which hold that one who makes a part, which is intended to be and does by the act of another become merged into the kind of munition specified in the act, is a manufacturer subject to tax.—*Carbon Steel Co. v. Collector* (251 U. S., 501); *Worth Bros. v. Collector* (251 U. S., 507.)

The plaintiff's present contention is that the plaintiff did not receive profits "from the sale or disposition of such articles," but was in effect only paid for work and labor expended on the property of another. Taking together the sections of this act, we conclude that the tax was imposed upon the business of manufacturing and was measured by the profits received upon the sale or disposition. If there were no profits, the tax would be nothing. Here, profits were undoubtedly received by plaintiff from the carrying out of its contract; and we come to the definition of "sale or disposition." It is clear that plaintiff did not make sales. It is equally clear that plaintiff did make a disposition of those articles. Having received the metal and having cast it into form, plaintiff disposed of the castings and so far disposed of the subject matter of the contract as to turn these articles over to the machine company and get its pay therefor. It can not be questioned that what plaintiff did amounted to a "disposition" of the articles within common dictionary definitions of that word; the substantial contention is that under the doctrine of ejusdem generis the statutory phrase can only include dispositions of the character of a sale. This rule may not prevail to the exclusion of the other rule, which requires every word and phrase to be given force and meaning if possible; and no reasonably probable course of conduct by manufacturers has occurred to

us or been suggested by counsel which would not be a sale and yet would be the "disposition" contemplated by this statute, if this conduct by this plaintiff should not be so named.

There is no room to suggest that the plaintiff, in making this contract, had any intent to evade this law—the law was not then in existence; but it is none the less important, in construing the law, to observe that, if plaintiff's contention is right, the statute could be evaded in very large part or wholly by just such contracts as this; and the same reasons which led the supreme court to conclude (251 U. S., 504) that the law could not be evaded by dividing the manufacturing process into several steps by separate persons apply with distinct force against plaintiff's contention here.

The line between manufacturing a part and merely furnishing work and labor thereon may be very difficult to draw in some cases, but that contingent difficulty does not induce hesitation where the facts of a case do not bring it near the line; and we are clear that while this transaction might be called, in the abstract, either "manufacture" or "work and labor," yet that if it is to be classified as one rather than the other it must be the former.

In reaching our conclusion we put no dependence on the claim that plaintiff had a lien upon the material, which gave an interest in the title and therefore made its release more directly in the nature of the sale of an interest. The claim is at least of doubtful applicability to the facts of this case concerning delivery, and to sustain it is unnecessary in order to make out a defense.

Nor do we overlook the suggestion that the cost of the raw material is one of the things which section 302 prescribes for deduction from the gross profits in computing net profits. If there was no cost of raw material, it does not follow that there was no sale or disposition and no tax; it follows only that there is nothing to be deducted on that score. The same section provides for the deduction of several other items of expense or cost, which, in a given case, may not exist at all. Their nonexistence does not demonstrate that there can be no tax.

It is true that a taxing statute should not be construed to materialize a tax not clearly intended (*Gould v. Gould,* 245 U. S., 151; *U. S. v. Mullins,* —C. C. A. 6—119 Fed., 334); but we think the intent is here clear enough. Every reason which would justify taxing a sale seems to justify a tax reaching this "disposition," and congress could not well have chosen a more completely inclusive term.

The judgment is affirmed.

(T. D. 3277—January 24, 1922.)

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; and titles II and III and sections 1000, title X, revenue act of 1921. 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 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 and title II of the revenue act of 1921 imposes 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 imposes 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.

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, and titles II and III and section 1000, title X, of the revenue act of 1921 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, 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.

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 application will be considered by the commissioner and a decision reached by him whether the applicant has met the conditions imposed by these regulations and whether the reasons advanced for permission to inspect are sufficient to permit the inspection. Such written application is not required of the officers and employees of the treasury department whose official duties require inspection of a return or of the solicitor of internal revenue.

5. The return of an individual shall be open to inspection as follows: (a) By the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue; (b) by the person who made the return, or by his duly constituted attorney in fact; (c) by the administrator, executor, or trustee of the taxpayer's estate, or by the duly constituted attorney in fact of such administrator, executor, or trustee, where the maker of the return has died; and (d) in the discretion of the commissioner of internal revenue, by one of the heirs at law or next of kin of such deceased person upon showing that he has a material interest which will be affected by information contained in the return.

6. A joint return of a husband and wife shall be open to inspection (a) by the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue; and (b) by either spouse for whom the return was made (or his or her duly constituted attorney in fact; or legal representative) upon satisfactory evidence of such relationship being furnished.

7. The return of a partnership shall be open to inspection (a) by the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue, and (b) by any individual (or his duly constituted attorney in fact or legal representative) 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.

8. The return of an estate shall be open to inspection (a) by the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue; (b) by the administrator, executor, or trustee of such estate, or by his duly constituted attorney in fact and (c) by one of the heirs 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.

9. The return of a trust upon which a tax has been determined shall be opened to inspection (a) by the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue; (b) by the trustee or trustees, or the duly constituted attorney in fact of such trustee or trustees; and (c) by any individual (or his duly constituted attorney in fact or legal representative) 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.

10. The return of a corporation shall be open to inspection (a) by the officers and employees of the treasury department whose official duties require such inspection and by the solicitor of internal revenue; (b) upon satisfactory evidence of identity and official position, by the president, vice-president, secretary, or treasurer of such corporation, or, if none, its principal officer; and (c) by a stockholder of such corporation as provided in paragraph 11 hereof.

11. A stockholder of record owning 1 per cent. or more of the shares of the outstanding stock of a corporation may be permitted to inspect its return. Such permission will only be granted upon an application in writing to the commissioner of internal revenue, accompanied by an affidavit showing applicant's address, the name of the corporation, the period of time covered by the return he desires to inspect, and a certificate from the officials of the corporation or other satisfactory evidence showing the amount of the corporation's outstanding capital stock, the number of shares owned by the applicant, the date when such stock was acquired, and satisfactory proof of identity. This privilege of inspection is personal and will be granted only to the stockholders. This rule has no application to the return of a corporation filed pursuant to the revenue acts of 1918 and 1921; specific provision, independent of presidential regulation, being made in those acts for inspection by a stockholder of a return of a corporation filed thereunder (second proviso of section 257).

12. When the head of an executive department (other than the treasury department) or of 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. The reasons submitted for permission to inspect as provided in this paragraph shall be considered by the secretary and a decision reached by him whether the reasons are sufficient to permit the inspection.

13. When it becomes necessary for the department to furnish returns or copies thereof for use in legal proceedings, inspection of such returns or copies that necessarily results from such use is permitted.

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

15. 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.

16. 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, 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.

17. All former regulations bearing on the subject of inspection of returns are hereby superseded.

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

EXECUTIVE ORDER.

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; and section 257, title II, section 336, title III, and section 1000, title X, of the revenue act of 1921, 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; and titles II and III and section 1000, title X, of the revenue act of 1921, 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.

THE WHITE HOUSE, January 24, 1922.

WARREN G. HARDING.

(T. D. 3284—February 11, 1922.)

Income tax.

Extension of time for filing returns for 1921 and subsequent years in the case of foreign organizations, and citizens of the United States residing or traveling abroad.

An extension of time for filing returns of income for 1921 and subsequent years and for paying the tax is hereby granted up to and including the fifteenth day of the sixth month following the close of the taxable year, in the case of (a) foreign partnerships and foreign corporations, regardless of whether or not they maintain an office or place of business within the United States; (b) domestic corporations which transact their business and keep their records and books of account abroad; (c) domestic corporations whose principal income is from sources within the possessions of the United States; and (d) American citizens residing or traveling abroad, including persons in military or naval service on duty outside the United States. The installments of tax which are actually due must be paid at the time of filing the return, and the other installments shall be paid as they fall due. In all such cases an affidavit must be attached to the return, stating the cause of the delay in filing. Taxpayers who take advantage of this extension will be charged with interest at the rate of one-half of 1 per cent. a month on the first installment of tax from the original due date thereof.