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Income-tax Department

Stephen G. Rusk

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Edited by STEPHEN G. RUSK.

The district court of the United States, southern district of Ohio, has made an interesting decision with respect to the features that must be present in the business transacted by building and loan associations if they are to be exempt from the provisions of the revenue act of 1918. To those familiar with the law and regulations relating to exempt associations of this kind it is difficult to understand why a suit should be brought to establish itself as exempt by a building and loan association that has "as its chief business dealing for profit with the general public by the methods of an ordinary savings bank." The court for this reason among others held that the Lilley Building & Loan Co. was not entitled to exemption from income taxes.

Stock subscription rights are dealt with in a comprehensive manner by the supreme court of the United States in the case of *Miles, Collector, versus Safe Deposit & Trust Company, Guardian.* The questions as to rights and responsibilities of taxpayers owning or dealing in such rights to stock may be considered as definitely answered by this decision.

A decision of importance is that (No. 3367) which amends article 836 of regulations 62. The amending language sets forth quite definitely the proof required by the department of internal revenue of corporations which seek to include in invested capital "tangible property paid in; value in excess of par value of stock." The limitations as to appraisals as proof will be better understood as a result of this amendment of article 836. There are many corporations that are unquestionably entitled to include in invested capital such tangible property, but have found it difficult to furnish proof of the fact because of lack of knowledge as to what would be accepted as proof. It is probable that the text of this article will be amplified further when the taxing officers obtain more experience by handling concrete cases of the kind involved by the section of the revenue acts dealing with this difficult question.

TREASURY RULINGS

(T. D. 3355, June 17, 1922.)

Income tax—Revenue act of 1918—Decision of court.

1. EXEMPTIONS—BUILDING AND LOAN ASSOCIATIONS—ESSENTIAL CHARACTERISTICS.

   Mutuality is the essential principle of a building and loan association. Its object is to raise a fund to be loaned among its members or such as may desire to avail themselves of the privilege. Its business is confined to its members.

2. BUILDING AND LOAN ASSOCIATIONS—EXEMPTION FROM TAX.

   When a building and loan association ceases to be substantially mutual and adopts as its chief business dealing for profit with the general public by the methods of an ordinary savings bank, it is no longer entitled to exemption under section 231, paragraph 4, of the revenue act of 1918.

3. SAME—INCIDENTAL TRANSACTIONS.

The making of loans to nonmembers or borrowing from nonmembers does not defeat exemption under section 231, paragraph 4, of the revenue act of 1918, if such transactions are simply incidental to the primary business of operating a building and loan association.

The appended decision of the United States district court, southern district of Ohio, eastern division, in the case of the *Lilley Building & Loan Co. v. Newton M. Miller, collector,* is published for the information of internal revenue officers and others.

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION, No. 2105.

The Lilley Building & Loan Company, plaintiff, v. *Newton M. Miller, as Collector of Internal Revenue, etc., defendant.*

PECK, district judge: Action to recover corporate income taxes paid under protest for the years 1918, 1919, and 1920, under the revenue act of 1918. Submitted on the evidence, without jury.

The essential question is whether the plaintiff was exempt from the tax. Section 231 (4) exempts "domestic building and loan associations and cooperative banks without capital stock, organized and operated for mutual purposes and without profit." It is claimed by the government that the plaintiff does a banking business under the guise of a building association; by the defendant, that its activities are no broader than those permitted to be exercised by such associations organized under the laws of Ohio. *General Code Ohio,* 9643, et seq.

The facts are not in dispute. Plaintiff does not hold meetings at stated intervals, as such associations frequently do, but keeps its place of business open during the usual business hours of the day.

It receives deposits from nonmembers, evidenced by entries in books such as are ordinarily used by savings banks. Withdrawals may be made on presentation of books. On these accounts (which constitute the bulk of its business) it pays interest at the stated rate of 4 per cent. It also receives time deposits, for which it issues certificates bearing interest at the rate of 5 per cent. It has paid-up stock, also "running stock," on which instalment payments are made. Both classes of stock receive semiannual dividends at the rate of 5 per cent per annum. Its statement for the year 1920, which may be taken as typical of the period of time involved, shows running stock at $121,000; paid-up stock at $123,000; deposits of $830,000; borrowed money, $20,000; and a reserve fund of $18,500 (odd figures are omitted). Its stockholders numbered 301; its borrowers 495, of whom but two were stockholders; and its savings depositors were 2,239. Its loans were all made upon homes, the average amount of each being about $3,500. It had no checking accounts. A depositor wishing to make a withdrawal presented his passbook and for the amount was given a check to his own order, which he indorsed and returned to the association, receiving thereon the cash. The association then put the check through its bank. Its mortgage loans were usually payable in monthly instalments. The few loans made to members took the same course as those to nonmembers. The borrowing members gave their notes and paid them off in instalments, such obligations being entirely disassociated from their obligations to pay for stock. The ordinary building association method of subscribing for stock to the amount of the loan, the stock when paid up extinguishing the loan, was not pursued.

It will be observed that about 80 per cent of its receipts and 97 per cent of its loans are transactions with nonmembers. Thus, by far the greater number of those with whom it does business have no interest in its profits, and as long as it remains solvent they have none in its losses. The earnings accrue to the stockholders. Mutuality of interest between stockholders, on the one hand, and the depositors and borrowers, on the other, is lacking.

This course of business seems to be within its charter powers as prescribed by the statutes of Ohio, particularly sections 9648 and 9657, *General Code* of Ohio. It does not, however, conform to the general conception of the functions of such an association. "Mutuality is the essential principle of a building association. Its business is confined to its own members; its object being to raise a fund to be loaned among themselves, or such as may desire to avail themselves of the privilege." *Eversmann* v. *Schmitt* (53 O. S. 175, 184). "The leading feature of such an association is that its members are kept upon a strictly co-operative basis with mutual advantages and benefits, sharing alike in the profits and sustaining their proportionate share of the losses." 4 R. C. L. Building and Loan Associations (p. 344). In *Halsell* v. *Merchants Insurance Co.* (105 Miss. 268) a concern organized under the building association act of the state of Mississippi, with powers similar to those exercised by the plaintiff, was held not to be such an association in the real meaning of the term. Having regard, therefore, to its general character as distinguished from its mere charter powers, there is no doubt that the business conducted was in the main not that of a building association as ordinarily conceived.

Plaintiff's counsel, however, contend that the definition adopted by the statutes of Ohio of the term "building association," and not that of general usage, is controlling. But it must be remarked that the statutes referred to do not attempt to define a "building association" as distinguished from a "savings association." "A corporation for the purpose of raising money to be loaned to its members shall be known * * * as a 'building and loan association' or as a 'savings association.'" G. C. 9643. The statutes carry the distinction no further. Both are treated alike. The same powers are conferred on each. Such a corporation may combine both phrases or parts thereof in its name. It may as truly be said that the corporation is designated as "savings association" as a "building association" by the laws of Ohio. Plaintiff has named itself a "building association." It might have named itself a "savings association." Its powers, liabilities, structure, character and place in the law would have been the same. It may even now change its name to a "building association." Would it be exempt as a "savings association"? If not, would it secure exemptions by such change of name, its character remaining precisely the same?

It is pointed out that the revenue acts of 1909 and 1913 exempted domestic building and loan associations "organized and operated exclusively for the mutual benefit of their members"; that these qualifying words were omitted in the act of 1918, that they were restored in the act of 1921 in this phraseology: "* * * domestic building and loan associations substantially all the business of which is confined to making loans to members," and it is argued that the omission of such language in the 1918 statute indicates a purpose of congress to exempt all corporations organized as domestic building associations under the laws of the several states, without any condition or qualification whatsoever; that congress took them with their charter powers and their activities as they existed, and exempted them from the tax; and it is further insisted that the intention of congress to tax them must clearly appear, and that they are not to be taxed by implication. *Gould* v. *Gould* (245 U. S. 151). But did congress omit the qualifying language in the act of 1918?

Having resort to the text of the act itself, it is to be noticed that the exception concludes with the words "organized and operated for mutual purposes and without profit." In Holmes *Federal Taxes,* 1922 edition, page 318, the author puts a comma before this clause, indicating an interpretation that would make these words modify not only cooperative banks but building associations. While the comma is not found in the act, and the usual presumption is that a phrase modifies its immediate antecedent, yet there is good reason for taking these words as referring to both antecedents. By so doing, the act is in conformity with the general policy of the acts of 1909, 1913 and 1921. Furthermore, there seems to be just as much reason for requiring that building associations, to be exempt, must be organized and operated for mutual purposes and without profit, as there is for applying that requirement to cooperative banks. Plaintiff's interpretation is that corporations organized under building association laws are exempt, although operated not for mutual purposes and with a profit to a limited number of stockholders, be they ever so few. Such an interpretation would seem to violate the intent of the act. Recurring to the matter of nonmenclature under the Ohio statutes, if we regard the plaintiff as a "savings association" we would have a mutual bank, *with* capital stock, *not* organized and operated for mutual purposes and *not* without profit. The matter certainly can not rest so lightly as on the arbitrary choice of a name. The facts must control. But if it be linguistically inaccurate to take the adjective phrase in question as modifying "building associations," nevertheless the rule of nescitur a sociis, which, in this instance, it seems proper to apply, would lead to the same interpretation.

It is not thought that the making of loans to nonmembers, or borrowing from nonmembers, or receiving deposits to be withdrawn on demand or on time, so long as such transactions are simply incidental to the primary business of operating a mutual building association, would defeat the exemption. In *Central Building Loan & Savings Co.* v. *Bowland* (216 Fed. 526) the question was whether the existence of such powers necessarily put the corporation out of the exempt class, and it was concluded that it did not, and that conclusion is thoroughly concurred in. But here the association has put aside the attribute of mutuality; indeed, it is most difficult to distinguish its activites from those of the ordinary savings bank. Its primary design no longer is to be an instrumentality of mutual helpfulness among its contributors in saving and borrowing for home owning, but its object now is the receiving of deposits from and lending money on interest to the public for the profit of the stockholders. Counsel argue that the people are better served thus; that mutuality is inefficient; that a concern of 10 stockholders and many customers is more beneficial to the public than one containing in its body corporate all of its depositors and borrowers. This may be true. But the statute has not exempted all corporations that receive deposits and loan money on homes.

It may not be possible to define precisely how far a building association may go in extraneous activities without losing its essential character, but it seems clear that when it ceases to be substantially mutual and adopts as its chief business dealing for profit with the general public by the methods of an ordinary savings bank, it is no longer a building association entitled to be exempted from income taxation under the statute in question.

It is therefore concluded that the petition must be dismissed.

(T. D. 3365, July 6, 1922.)

Income Taxes—Act of February 24, 1919—Decision of Supreme Court.

1. Stock Subscription Rights—Nature—Income.

   A stockholder's privilege of subscribing to new shares of stock before they are offered to the public is an incident of his stock ownership, and the acquisition of that privilege, while it may increase the value of the stockholder's interest in the corporation, does not constitute a segregation of the profits of the corporation, and is not gain, profit, or income to the stockholder.

2. Same—Sale of Rights—Extent of Tax Liability.

   A stockholder of a corporation who receives the right to subscribe for shares of a new issue of stock is, on sale of such right, liable to income tax on so much of the proceeds as exceeds the cost of the right (citing *Merchants Loan & Trust Co.* v. *Smietanka,* T. D. 3173).

3. Same—Sale of Rights—Computation of Gain.

   The new shares, if and when issued, are indistinguishable from the old shares, and as they are received by reason of the ownership of the old shares, the average of the price paid for the old shares and of the subscribing price for the new shares constitutes cost for either an old share or a new share in computing taxable gain, following the analogy of the computation employed in the case of the sale of stock dividend shares. On the sale of stock rights, cost and selling price are determined by assuming that the stockholder, instead of selling his rights, subscribed for new shares and sold them, and the gain taxable to a stockholder who sells his rights is equal to the gain taxable to a stockholder who subscribes for a new share and sells his new share. In ascertaining the selling price it is assumed that the stockholder, if he had subscribed, would have refused to sell his new share for any amount less than the sum of the subscribing figure and the prevailing price offered for the rights, and the sum of these two amounts is assumed to represent the selling price of the stock rights. The taxable gain, therefore, is found by taking the sum of the subscribing price and the market value of the rights, and subtracting from that sum the average of (1) the cost of one old share, and (2) the subscribing price of one new share.

4. Stock Subscription Rights—Sale of Rights—Computation of Gain.

The acquisition of a new share by the exercise of a right to subscribe is merely an exercise of one of the rights of stock ownership, and until the new share has been sold, no profit has been realized, and there is no taxable income.

Supreme Court of the United States. No. 416. October Term, 1921.

Joshua W. Miles, collector of internal revenue for the district of Maryland, plaintiff in error, v. *Safe Deposit and Trust Co. of Baltimore, guardian of Frank R. Brown.*

Error to the district court of the United States for the district of Maryland.

[May 29, 1922.]

Mr. Justice Pitney delivered the opinion of the court:

D fendant in error, a corporation organized under the laws of Maryland and authorized to act as guardian, was on January 30, 1919, appointed by the orphans court guardian of Frank R. Brown, an infant whose father had died intestate about a year before. The son as next of kin became entitled to 35 shares of the stock of the Hartford Fire Insurance Co., and they were transferred to defendant in error as such guardian, and still are held by it in that capacity. At that time the capital stock of the insurance company issued and outstanding consisted of 20,000 shares of the par value of $100 each. Later in the year that company, under statutory authority, increased its capital stock to 40,000 shares of the same par value. The resolution of the stockholders sanctioning the increase provided that the right to subscribe to the new issue should be offered to the stockholders at the price of $150 per share, in the proportion of one share of new stock to each share of stock held by them; subscriptions to be payable in instalments and the directors to have power to dispose of shares not so subscribed and paid for in such manner as they might determine to be for the best interests of the company. In July, 1919, defendant in error, pursuant to an order of the orphans court, sold the subscription right to 35 shares owned by its ward for $12,546.80, equivalent to $358.48 per share. The commissioner of internal revenue, holding that this entire amount was income for the year, under the provisions of the act approved February 24, 1919 (ch. 18, 40 Stat. 1057), assessed and plaintiff in error collected a tax amounting to $1,130.77 by reason of it. Defendant in error, having paid this under protest and unavailingly appealed to the commissioner, claiming that none of the amount so received was income within the meaning either of the act or of the sixteenth amendment, brought this action against the collector to recover the entire amount of tax so assessed and paid. The case was tried before the district court without a jury on stipulated facts and evidence. Plaintiff's extreme contention that the subscription right to new stock and also the proceeds of the sale of the right were wholly capital and not in any part subject to be taxed as income, was overruled upon the authority of *Merchants' Loan & Trust Co.* v. *Smietanka* (255 U. S. 509), then recently decided. The trial court, in the second place, held that, of the proceeds of the sale of the subscription rights, so much only as represented a realized profit over and above the cost to plaintiff of what was sold was taxable as income. In order to compute the amount of the profit, the court commenced with the value of the old shares prior to authorization of the stock increase, which upon the basis of evidence contained in the stipulation was taken to be what they were assessed at by the United States for purposes of the estate tax at the death of the ward's father, viz., $710 per share, and added the $150 necesary to be paid by a stockholder or his assignee in order to obtain a share of the new stock, making the cost of two shares (1 old and 1 new) $860 and half of this the cost of one share.

The sale of the subscription rights at $358.48, the purchaser to pay the issuing company $150 per share, was treated as equivalent to a sale of the fully paid shares at $508.48 each, or $78.48 in excess of the $430 which represented their cost to plaintiff; and this difference multiplied by 35, the number of shares or rights sold, yielded $2,746.80 as the gain realized out of the entire transaction. Upon this the court held plaintiff to have been properly taxable, and upon nothing more, no income tax being assessable with respect to the 35 shares still retained, because although they were considered worth more, ex-rights, than the $430 per share found to be their cost, the difference could not be regarded as a taxable profit unless or until realized by actual sale (273 Fed. 822). To review the final judgment entered pursuant to the findings and opinion, which sustained only in part plaintiff's demand for a refund of the tax paid, the collector of internal revenue prosecuted a direct writ of error from this court under section 238, *Judicial Code,* because of the constitutional questions involved.

There is but one assignment of error, based upon a single exception, which denied that plaintiff was entitled to recover anything whatever; hence the correctness of the particular recovery awarded is not in form raised; but the trial judge, having the complete facts before him, almost of necessity passed upon them in their entirety in order to determine, according to truth and substance, how much of what plaintiff received was, and how much was not, income in the proper sense, as is proper in a case involving the application of the sixteenth amendment (*Eisner* v. *Macomber* (252 U. S. 189, 206); *United States* v. *Phellis* (Nov. 21, 1921, 257 U. S.—); and in order to review the judgment, it will be proper for us to analyze the reasoning upon which it was based.

It is not in dispute that the Hartford Fire Insurance Co. is a corporation of the state of Connecticut and that the stock increase in question was made under authority of certain acts of the legislature and certain resolutions of the stockholders, by which the right to subscribe to the new issue was offered to existing stockholders upon the terms mentioned. It is evident, we think, that such a distribution in and of itself constituted no division of any part of the accumulated profits or surplus of the company, or even of its capital; it was in effect an opportunity given to stockholders to share in contributing additional capital, not to participate in distribution. It was a recognition by the company that the condition of its affairs warranted an increase of its capital stock to double the par value of that already outstanding, and that the new stock would have a value to the recipients in excess of $150 per share; a determination that it should be issued pro rata to the existing stockholders, or so many of them as would pay that price. This privilege of itself was not a fruit of stock ownership in the nature of a profit; nor was it a division of any part of the assets of the company.

The right to subscribe to the new stock was but a right to participate, in preference to strangers and on equal terms with other existing stockholders, in the privilege of contributing new capital called for by the corporation—an equity that inheres in stock ownership under such circumstances as a quality inseparable from the capital interest represented by the old stock, recognized so universally as to have become axiomatic in American corporation law.—*Gray* v. *Portland Bank* (3 Mass. 364); *Atkyns* v. *Albree* (12 Allen 359, 361); *Jones* v. *Morrison* (31 Minn. 140, 152-153); *Eidman* v. *Bowman* (58 Ill. 444, 447); *Humboldt Driving Park Ass'n* v. *Stevens,* (34 Neb. 528, 534); *Electric Co.* v. *Electric Co.* (200 Pa. 516, 520-523, 526); *Wall* v. *Utah Copper Co.* (70 N. J. Eq. 17, 28 et seq.); *Stokes* v. *Continental Trust Co.* (186 N. Y. 285). Evidently this inherent equity was recognized in the statute and the resolution under which the new stock here in question was offered and issued.

The stockholder's right to take his part of the new shares therefore—assuming their intrinsic value to have exceeded the issuing price—was essentially analogous to a stock dividend. So far as the issuing price was concerned, payment of this was a condition precedent to participation, coupled with an opportunity to increase his capital investment. In either aspect, or both, the subscription right of itself constituted no gain, profit, or income taxable without apportionment under the sixteenth amendment. *Eisner* v. *Macomber* (252 U. S. 189) is conclusive to this effect.

But in that case it was recognized (p. 212) that a gain through sale of dividend stock at a profit was taxable as income, the same as a gain derived through sale of some of the original shares would be. In that as in other recent cases this court has interpreted "income" as including gains and profits derived through sale or conversion of capital assets, whether done by a dealer or trader, or casually by a nontrader, as by a trustee in the course of changing investments.—*Merchants' Loan & Trust Company* v. *Smietanka* (255 U. S. 509, 517-520.)

Hence the district court rightly held defendant in error liable to income tax as to so much of the proceeds of sale of the subscription rights as represented a realized profit over and above the cost to it of what was sold. How the gain should be computed is a matter of some contention by the government in this court; but it admits of little doubt. To treat the stockholder's right to the new shares as something new and independent of the old, and as if it actually cost nothing, leaving the entire proceeds of sale as gain, would ignore the essence of the matter, and the suggestion cannot be accepted. The district court proceeded correctly in treating the subscription rights as an increase inseparable from the old shares, not in the way of income but as capital; in treating the new shares if and when issued as indistinguishable legally and in the market sense from the old; and in regarding the sale of the rights as a sale of a portion of a capital interest that included the old shares. What would have happened had defendant in error decided to accept the new shares and pay the issuing price instead of selling the rights is of no consequence; in that event there would have been no realized profit, hence no taxable income. What resulted or might have resulted to defendant in error's retained interest in the company, depending upon whether the purchaser exercised his right to subscribe or allowed it to lapse, or whether in the latter event the stock was sold by the directors is of speculative interest only. Defendant in error resorted to the market for the sale of a part of its capital interest, concededly sold at an advance over cost, and what the profit actually was is the sole concern here; not whether it might have been more or less, nor whether the purchaser disposed of the stock to advantage.

That a comparison of the cost at acquisition and the selling price is proper under section 202 (*a*) of the act (40 Stat. 1069), where, as here, the property was acquired and sold within the same taxing year, we understand to be conceded. Under the stipulation, the court below was warranted in finding $710 per share to have been the fair market value of the old stock when turned over to the guardian, and treating this as its cost to the trust. It was proper to add to this the $150 required to be paid to the company and treat the total as the cost to plaintiff of each two shares one of which was to pass to the purchaser. This in essence is the method adopted by the treasury department in the case of a sale of dividend stock, in regulations No. 45 (1920 ed., art. 1547), which reads:

ART. 1547. *Sale of stock received as dividend.*—Stock in a corporation received as a dividend does not constitute taxable income to a stockholder in such corporation, but any profit derived by the stockholder from the sale of such stock is taxable income to him. [Following *Eisner* v. *Macomber,* supra.] For the purpose of ascertaining the gain or loss derived from the sale of such stock, or from the sale of the stock with respect to which it is issued, the cost (used to include also, where required, the fair market value as of March 1, 1913), of both the old and new shares is to be determined in accordance with the following rules:

"(1) Where the stock issued as a dividend is all of substantially the same character or preference as the stock upon which the stock dividend is paid, the cost of each share of both the old and new stock will be the quotient of the cost, or fair market value as of March 1, 1913, if acquired prior to that date, of the old shares of stock divided by the total number of the old and new shares. * * *"

That the averaging of cost might present more administrative difficulty in a case more complicated than the present, as where the old shares were acquired at different times, is not a sufficient ground for denying the soundness of the method itself.

Various suggestions, more or less ingenious, as to how the profit ought to be computed, made by counsel for defendant in error and by an amicus curiae, have been examined and found faulty for reasons unnecessary to be mentioned. Upon the whole, we are satisfied that the method adopted by the district court led to a correct result.

Judgment affirmed.

(T. D. 3367, July 10, 1922)
War excess profits tax.

Article 836, regulation No. 45 (1920 edition), and article 836, regulations No. 62, amended.

Article 836, regulations No. 45 (1920 edition), and article 836, regulations No. 62, are hereby amended to read as follows:

ART. 836. *Tangible property paid in; value in excess of par value of stock.*—The paid-in surplus allowed in any case is confined to the value definitely known or accurately ascertainable at the time the property is paid in. Evidence offered to support a claim for a paid-in surplus must be as of the date of the payment. It may consist among other things of (*a*) an appraisal of the property by disinterested authorities; (*b*) a certificate of the assessed value in the case of real estate, or (*c*) evidence of a market price in excess of the par value of the stock or shares. Opinion evidence, expert or otherwise, of the value of property as of a prior date will not be accepted. Retrospective appraisals submitted in support of a claim for a paid-in surplus will not be accepted in any case where other reasonably satisfactory evidence is available and in any case will be accepted only after rigid scrutiny and will be followed only to the extent to which their reasonableness is fully established. The property which was paid in is the basis of the appraisal, and the appraisal must reconcile the accounts so as to reflect accurately the actual value on the date as of which the appraisal is made and the depreciation sustained. Proper consideration must in all cases be given to depreciation and the expired and remaining serviceable life of the property must be shown. To be acceptable retrospective appraisals must show: (1) The history of the business and manner in which the information or data was acquired; (2) the manner in which the appraisals were constructed; (3) the inventory on the date of the appraisal in detail; (4) the date of acquisition of all items remaining in the inventory as of the date of appraisal; (5) the elimination from the inventory of all items acquired subsequent to the date as of which the appraisal is made and how this was effected (all items, the date of acquisition of which cannot be definitely determined, should be listed separately and all the facts bearing upon the date of acquisition given); (6) the replacement cost at the date as of which the appraisal is made of each item accepted as on hand on that date determined upon competent data, with a statement of the method employed in arriving at such cost (estimates and general statements will not be accepted); (7) the rate and total amount of depreciation as shown by the books; (8) the rate and total amount of depreciation taken upon each item included in the appraisal for the purposes of the appraisal (if other than normal rates of depreciation are used the reason therefor and the method of computing depreciation must be fully explained); (9) the actual cost when ascertainable of each item included in the appraisal; (10) the book value on the date as of which the appraisal is made of all the items included in the appraisal; and (11) a detailed statement of all plant facilities and additions, represented by capital expenditures previously written off, which were still in use on the date as of which the appraisal was made and all the depreciation actually sustained or accrued on such items. No claim will be allowed for paid-in surplus in any case in which the addition of value has been developed or ascertained subsequent to the date on which the property was paid in to the corporation, or in respect of property which the stockholders or their agents on or shortly before the date of such payment acquired at a bargain price, as, for instance, at a receiver's sale. Generally, allowable claims under this article will arise out of transactions in which there has been no substantial change of beneficial interest in the property paid in to the corporation, and in all cases the proof of value must be clear and explicit.

Franklin K. Moyer

Franklin K. Moyer, member of the American Institute of Accountants, certified public accountant of Pennsylvania, died at Souderton, Pennsylvania on August 12th. Mr. Moyer was a partner of the firm of Moyer & Schectman, Philadelphia.

Mack E. Stewart

Mack E. Stewart, member of the American Institute of Accountants, died June 26th as a result of a gasoline explosion. Mr. Stewart had been a member of the institute since 1920 and was an active member of the profession in Oklahoma.

Frank H. Walker

Frank H. Walker, member of the American Institute of Accountants, died August 16, 1922. Funeral services were held at Amherst on August 18th. Mr. Walker had been associated for many years with the firm of Herbert F. French & Co. of Boston.

Oklahoma Society of Certified Public Accountants

At a meeting of the Oklahoma Society of Certified Public Accountants, held June 16, 1922, the following officers were elected: President, Homer C. Hammonds; treasurer, Mack E. Stewart; secretary, Carl L. Rice; auditors, Arthur Jones, Mack Porter; trustees, Robert E. Garnett, Hugh M. Rush and William C. Beck.

Arthur E. Chandler and Howard E. Murray announce the admission to partnership of Floyd Chilton, under the firm name of Chandler, Murray & Chilton, with offices at 816-818 Second National building, Akron, Ohio.

William Bryden & Co. announce change in name to Bryden & Fauble and the removal of their offices to 638 Securities building, Omaha, Nebraska.

Patterson, Teele & Dennis announce the admission of Harold Burton Hart to partnership as of July 18, 1922.

Seward, Stone & Monde announce the opening of an office in the Aeolian building, 33 West 42nd street, New York.