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Income Tax Department

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From an accounting standpoint perhaps the most significant of the new treasury rulings is the amended and enlarged article 23, on the basis of computing income, published under T. D. 2873.

Re-emphasizing the obligation to account on the basis of the true income, whether this be on the cash or the accrual alternative, the regulation directs the adoption, for the taxable year 1918, of the basis correctly reflecting net income, regardless of which basis may have been followed in the past; and it permits future changes from one alternative to the other, after first duly securing the consent of the commissioner. It lays down the principle that no business in which inventories are an essential factor can report its true income on any other than the accrual method in regard to purchases and sales. Whenever the basis of reporting is changed, the taxpayer must submit a separate statement showing the amounts, at both the beginning and end of the taxable year, of (a) prepaid expenses, (b) income accrued but uncollected, (c) expenses accrued but unpaid and (d) income collected in advance.

The amendment to article 184, embodied in T. D. 2859, changes the basis of valuation for amortization purposes of property created for war purposes but having a useful value thereafter. Instead of the estimated reproduction cost as of April, 1919, the estimated value of the property to the taxpayer himself in terms of its actual use or employment in his going business is adopted. Such value, however, is in no case to be less than the sale or salvage value of the property. For the purposes of returns to be made in 1919, the preliminary estimate of the amount of such amortization shall in no case exceed 25 per cent. of the cost of the property.

That interest accrued or interest adjustments on Victory notes converted from one series to the other is to be treated as interest on the series on which it actually accrued is the sense of T. D. 2865.

Under T. D. 2869 two new articles, 92a and 312a, are inserted in regulation 45 as amendments thereto.

Article 92a determines when the wages of a nonresident alien are derived from sources within the United States. The wages of an alien seaman on a ship regularly engaged in foreign trade are not to be regarded as from sources within the United States, even though the ship flies the American flag, or although during a part of the time the ship touched at United States ports and remained there a reasonable time for the transaction of business.

Article 312a determines when alien seamen are to be regarded as residents.

T. D. 2870 amends article 1567, which relates to the exchange of stock of one corporation for stock of no greater par value in another corporation or other corporations where two or more corporations unite their

properties by merger, consolidation or other method of combination. The new material, which is shown below in italics, makes this article applicable to stock of no par value, where previously it did not apply thereto.

Instructions relative to the procedure to be followed by the collectors in the case of claims for refund or abatement are continued in T. D. 2871, which is an amplification of T. D. 2688 and an amendment to article 1036.

T. D. 2872 contains regulations relative to administrative accounting of the bureau of internal revenue and is of no importance to the taxpayer in computing his net income, and invested capital and in arriving at his tax.

The decision of the supreme court of the United States, under the act of 1913, published in T. D. 2876, determined that where a nonresident alien owned stocks, bonds and mortgages secured upon property in the United States, or payable by persons or corporations domiciled in the United States, and where the income therefrom was collected for and remitted to the nonresident alien by an agent domiciled in the United States and where the agent had physical possession of the certificates of stock, bonds and mortgages, the income therefrom is subject to income tax, because it was from "property owned" in the United States. Now, however, the income is taxable if from "sources within the United States," regardless of the *situs* of the income-producing property.

TREASURY RULINGS

(T. D. 2859, June 10, 1919.)

Amendment to paragraph numbered (3) *of article* 184, *final edition of regulations* 45, *dealing with the cost of war facilities which may be amortized.*

The paragraph numbered (3) in article 184 of the final edition of regulations 45, which reads as follows:

"(3) In the case of other property the basis is the estimated reproduction cost as of April, 1919, of such property in its then condition. In the final determination such cost will be ascertained under stable post-war conditions, without reference to such date,"

is hereby amended to read as follows:

(3) In the case of other property the basis for amortization calculation shall be the estimated value of the property to the taxpayer in terms of its actual use or employment in his going business, such value in no case to be less than the sale or salvage value of the property: *provided, however,* that in no case shall the preliminary estimate (for purposes of returns to be made in 1919) of the amount of such amortization exceed 25 per cent. of the cost of the property. In the final determination the amount of the amortization allowance will be ascertained upon the basis of stable post-war conditions under regulations to be promulgated when these conditions become apparent.

(T. D. 2865, June 14, 1919.)

Interest on Victory notes.

All interest accrued on 4¾ per cent. Victory notes at the date of any conversion by the taxpayer into 3¾ per cent. Victory notes will, for the purposes of computing net income, be deemed to be interest upon 4¾ per cent. Victory notes, and will be entitled only to the exemptions from

taxation to which interest on 4¼ per cent. Victory notes is entitled. Any and all amounts received by any taxpayer from the United States by way of adjustment of accrued interest upon conversion of 4¼ per cent. Victory notes into 3¼ per cent. Victory notes will be deemed to be interest upon 4¼ per cent. Victory notes.

All interest accrued on 3¼ per cent. Victory notes at the date of any conversion by the taxpayer into 4¼ per cent. Victory notes will, for the purposes of computing net income, be deemed to be interest upon 3¼ per cent. Victory notes, and will be entitled to the exemptions from taxation to which interest on 3¼ per cent. Victory notes is entitled.

(T. D. 2869, June 20, 1919.)

Alien seamen—Amendments to articles 92 and 312 of regulations 45.

The final edition of regulations 45 is amended by inserting immediately after article 92 a paragraph to be known as article 92a, as follows:

ART. 92a. *When the wages of a nonresident alien seaman are derived from sources within the United States.*—While resident alien seamen are taxable like citizens on their entire income from whatever sources derived, nonresident alien seamen are taxable only on income from sources within the United States. Ordinarily, wages received for services rendered inside the territorial United States are to be regarded as from sources within the United States. The wages of an alien seaman earned on a coast-wise vessel are from sources within the United States, but wages earned by an alien seaman on a ship regularly engaged in foreign trade are not to be regarded as from sources within the United States, even though the ship flies the American flag, or although during a part of the time the ship touched at United States ports and remained there a reasonable time for the transaction of its business. The presence of a seaman aboard a ship which enters a port for such purposes of foreign trade is merely transitory and wages earned during that period by a nonresident alien seaman are not taxable. There is no withholding from the wages of alien seamen unless they are nonresident within the rules laid down in articles 311 to 315. Even in the case of a nonresident alien seaman the employer is not obliged to withhold from wages unless those wages are from sources within the United States as defined above. As to when alien seamen are to be regarded as residents, see article 312a.

The final edition of regulations 45 is amended by inserting immediately after article 312 a paragraph to be known as article 312a, as follows:

ART. 312a. *Alien seamen, when to be regarded as residents.*—In order to determine whether an alien seaman is a resident within the meaning of the income tax law, it is necessary to decide whether the presumption of nonresidence is overcome by facts showing that he has established a residence in the territorial United States, which consists of the states, the District of Columbia, and the territories of Hawaii and Alaska, and excludes other places. Residence may be established on a vessel regularly engaged in coastwise trade, but the mere fact that a sailor makes his home on a vessel flying the United States flag and engaged in foreign trade is not sufficient to establish residence in the United States, even though the vessel, while carrying on foreign trade, touches at American ports. An alien seaman may acquire an actual residence in the territorial United States, within the rules laid down in article 312, although the nature of his calling requires him to be absent from the place where his residence is established for a long period. An alien seaman may acquire such a residence at a sailor's boarding house or hotel, but such a claim should be carefully scrutinized in order to make sure that such residence is bona fide. The filing of form 1078, revised, or taking out first citizenship papers, is proof of residence in the United States from the time the form is filed or

the papers taken out, unless rebutted by other evidence showing an intention to be a transient. The fact that a head tax has been paid on behalf of an alien seaman entering the United States is no evidence that he has acquired residence, because the head tax is payable unless the alien who is entering the country is merely in transit through the country. An alien may remain a nonresident although he is not in transit through the country. As to when the wages of alien seamen are subject to tax see article 92a.

(T. D. 2870, June 20, 1919.)

Income tax.

Amending article 1567, final edition of regulations 45, dealing with exchange of stock for stock having no par value, and fixing an aliquot part of the capital when required by statute to be stated, as the par value, for the purposes of section 202, of such so-called "no-par-value" stock.

The final edition of regulations 45 is amended by changing article 1567 to read as follows:

ART. 1567. *Exchange of stock for other stock of no greater par value.* —In general, where two (or more) corporations unite their properties by either (*a*) the dissolution of corporation B and the sale of its assets to corporation A, or (*b*) the sale of its property by B to A and the dissolution of B, or (*c*) the sale of the stock of B to A and the dissolution of B, or (*d*) the merger of B into A, or (*e*) the consolidation of the corporations, no taxable income is received from the transaction by A or B or the stockholders of either, provided the sole consideration received by B and its stockholders in (*a*), (*b*), (*c*) and (*d*) is stock or securities of A, and by A and B and their stockholders in (*e*) is stock or securities of the consolidated corporation, in any case of no greater aggregate par or face value than the old stock and securities surrendered. *So-called "no-par-value stock" issued under a statute or statutes which require the corporation to fix in a certificate or on its books of account or otherwise an amount of capital or an amount of stock issued which may not be impaired by the distribution of dividends, will for the purpose of this section be deemed to have a par value representing an aliquot part of such amount, proper account being taken of any preferred stock issued with a preference as to principal. In the case (if any) in which no such amount of capital or issued stock is so required, "no-par-value stock" received in exchange will be regarded for the purposes of this section as having in fact no par or face value, and consequently as having "no greater aggregate par or face value" than the stock or securities exchanged therefor.*

(T. D. 2871, June 21, 1919.)

Claims for refund or abatement.

Procedure to be followed by collectors with respect to claims for refund or abatement. Extension of T. D. 2688. Amendment to article 1036, regulations 45.

(1) Claims for refund or for abatement, pertaining to tax returns which have not at the time been posted to an assessment list, will be numbered to agree with, attached to, and made a part of, the original return so that the total tax as posted on the assessment list will be the admitted tax liability of the taxpayer. If a taxpayer submits an amended return as a claim either for refund or for abatement before the original return has been listed, such amended return will be numbered to agree with and attached to the original return in the same manner. Similarly, errors or omissions in returns discovered by the collector prior to the posting operate as an amendment to the amount of tax liability shown by the return.

In other words, all amendments or changes, either increasing or decreasing the amount of tax liability and whether originated by the taxpayer or by the collector, will be reflected on the face of the return itself and the posting to the assessment list will be of the correct amount. In this connection attention is called to the provision of mim. 2124.

(2) Amended returns showing a reduced tax liability will not be acted upon by collectors if the original return has been previously entered on the assessment list. All claims pertaining to returns which have been listed for assessment must be submitted on form 46, if the tax has been paid, or on form 47 if the tax has not been paid.

(3) The following classes of claims may be included on form 751 (if for refund), or blanket form 47 (if for abatement). Separate sheets properly designated of forms 751 or blanket forms 47 must be prepared for returns on file in the commissioner's office and those on file in the collector's office.

(*a*) All claims for refund or abatement pertaining to form 1040—A income returns for the calendar year 1918 or subsequent years.

(*b*) Errors in computation (these include only mistakes in arithmetic).

(*c*) Errors in *specific* exemptions on income returns. (These include such items as failure to deduct exemptions for dependents, the $2,000 exemption for corporations, etc.)

(*d*) Payments in excess of the total amount of tax due as shown by the return. (These include such cases as a remittance of $1,500 covering payment of a tax liability of $1,300, etc.)

(*e*) Amount previously paid on submission of a tentative income return in excess of the total tax liability shown by the final return.

(*f*) Duplicate payments or assessments.

(*g*) All claims for refund on account of nonrevenue remittances forwarded to the collector in error and deposited by him. (These include such items as state or municipal taxes sent to the collector and deposited by him as "unidentified," etc.)

(4) All claims for refund or abatement other than those enumerated above will be forwarded to the commissioner for settlement. However, *any* claim may be so forwarded whenever the collector does not feel absolutely certain of the law, regulations, or precedent involved, or if his disbursing bond is insufficient to enable him to procure an advance on accountable warrant of the requisite amount of funds from which to make payment.

(5) Before forwarding claims to the commissioner for settlement, certification must be made on the claim of the account number, the amount of tax originally due, the dates and amounts of all payments or other transactions affecting such amount, and the balance due as shown by the account on the list. All claims of this nature now on file in the collector's office and hereafter as received should be certified and forwarded immediately.

(6) Claims submitted by taxpayers direct to the commissioner will in future be referred to the collector for this certificate as to the status of the account on the assessment list. Until so certified by the collector such claims will not be settled. When certifying claims for refund the collector will make a notation in the "remarks" column of the date and amount of the refund claim, but no record will be made on the tax journals unless a credit balance exists in the taypayer's account. In this case, the amount of the claim as certified will be posted to the list and recorded on the journal in the same manner as though payment were made by the collector.

(7) In all cases where abatement claims are certified by the collector, notation will be made on the assessment list of the date on which the

abatement claim was filed and the amount thereof, and on the daily journals, form 769. (See paragraph 49, *Manual of Revenue Accounting.*)

(8) Blanket claims for abatement of uncollectible items, form 53; may be filed by the collector as heretofore. The same record will be made on the tax journal and on the assessment list as in cases where the taxpayers submit such claims, the only difference being that in the first instance the claim originates with the taxpayer instead of with the collector.

(9) The last two sentences of article 1036, regulations 45 (final edition), are to be replaced by the following:

"In certain cases of overpayment by taxpayers the collector may repay the excess after allowance by the commissioner of a claim for refund made by the collector on form 751. The cases in which refund is made through collectors are covered by specific provisions not herein incorporated. The commissioner has no authority to refund on equitable grounds penalties legally collected."

(10) All existing regulations in conflict with the above are hereby revoked.

(T. D. 2872, June 20, 1919.)

Accounting.

Regulations pertaining to administrative accounting, effective July 1, 1919.

The following regulations pertaining to administrative accounting of the bureau of internal revenue, effective July 1, 1919, are published for the information of all concerned:

(1) No expense shall be incurred or disbursement made by any administrative or disbursing officer of the internal revenue service involving an internal revenue appropriation unless an allowance therefor has previously been granted by the secretary of the treasury, or by his authority, upon the recommendation of the commissioner of internal revenue (but as to indefinite appropriations see par. 10 of these regulations). In cases of emergency, requests for such allowance or the preliminary notification of the granting thereof, or both, may be made by telegraph.

(2) The grants of allowances, as well as withdrawals of same, must be made through the medium of standard forms provided therefore (see par. 7), and no charges encumbering appropriations will be made in the division of accounts or credits allowed for disbursements made unless the formal allowance documents covering same have been received in said division.

(3) It is hereby ordered that the administration of the granting of allowances (above referred to) shall, in case of allowances for the internal revenue field service, be centralized in (*a*) supervisor of collectors' offices and (*b*) chief of revenue agents, and all requests for such allowances will be made upon the commissioner through these offices. The issuing of the grants of said allowances, through the medium of the formal allowance documents, will be centralized in (*c*) division of appointments and (*d*) division of supplies and equipment.

(*a*) The supervisor of collectors' offices will have jurisdiction over the granting of all allowances for salaries and expenses of officers and employees, for supplies and equipment, and for other requirements, of collectors' offices. (See also par. 3 (*c*).)

(*b*) The chief of revenue agents will have jurisdiction over the granting of all allowances for salaries and expenses of officers and employees, for supplies and equipment and for other requirements of the offices of revenue agents in charge.

(*c*) The division of appointments will have jurisdiction over the issuing of the formal allowance documents covering the salaries and expenses of internal revenue officers and employees in the field service. Expenses will

include those for railroad and other fares (whether paid by reimbursing the traveler or by auditor's settlement upon transportation requests), for subsistence (whether on actual expense or per diem basis), and any other travel or other expenses personal to officers and employees. Said division, under the immediate direction of the assistant to the commissioner, will keep all files and records relating to appointments in the field, as well as in the bureau, and it will execute decisions as to field appointments, but will not exercise discretion with respect to any appointment, promotion, or separation from the service of any officer or employee. This discretion is lodged in the supervisor of collectors' offices and the chief of revenue agents' office, subject to the discretion of the commissioner. (See also paragraphs 3 (*a*) and 4 (*a*).)

(*d*) The division of supplies and equipment will have jurisdiction over the issuing of the formal documents covering all allowances for the field service other than those named in paragraph 3 (*c*) above, including supplies and equipment, freight and express transportation, rentals, printing and binding, and miscellaneous expenses other than personal. (See also paragraph 4 (*b*).)

As requests for allowances are received from the field service and indorsed by the supervisor of collectors' offices and the chief of revenue agents, within their respective jurisdictions, said requests will be transmitted to the division of appointments in case of allowances named in paragraph 3 (*c*), and to the division of supplies and equipment in case of allowances named in paragraph 3 (*d*), where the formal allowance documents will be prepared and submitted to the commissioner for approval.

(4) It is further ordered that the administration of the granting of all allowances for the bureau of internal revenue at Washington shall be centralized in (*a*) division of appointments, and (*b*) division of supplies and equipment, and all requests for said allowances will be made upon the commissioner through these divisions.

(*a*) The division of appointments will have jurisdiction over the granting of allowances for salaries and expenses of bureau officers and employees. (See also paragraph 3 (*c*).)

(*b*) The division of supplies and equipment will have jurisdiction over the granting of all bureau allowances other than those for salaries and expenses of bureau officers and employees. (See also paragraph 3 (*d*).)

(5) All allowances will be divided into two classes, viz, (*a*) annual allowances, (*d*) special allowances.

(*a*) Annual allowances comprise those covering fixed charges which recur regularly from month to month and which are granted for the full fiscal year or such portion thereof as is unexpired at the time of their becoming effective. Charges which accrue irregularly, although made to cover the period of the fiscal year, or which are not paid regularly each month, should not be classed as annual allowances. All unused balances of the monthly portion or allotment of annual allowances will be regularly liquidated by the division of accounts and become available for allowance under the respective appropriations for other purposes. Salaries and fixed allowances of permanent employees are the most common examples of annual allowances.

(*b*) Special allowances comprise those which are not included in the above definition of annual allowances, and which are made for some special purpose or on account of which charges accrue or payments are made irregularly, or both. Balances of special allowances will be carried in the division of accounts, against which all payments will be checked, and any final balances will be liquidated and made available for allowance for other purposes. To this end it is important that disbursing agents in reporting payments upon the schedules shall indicate when they are final as to each

special allowance. Salaries and travel allowances of temporary employees, office supplies and equipment, leases, printing, and lump sums for miscellaneous expenses are examples of special allowances.

(6) Withdrawals of annual and special allowances, in whole or in part, will, in case of each class of allowances, be covered by separate series of forms; which will be issued by the division of appointments and the division of supplies and equipment as provided in case of the granting of annual and special allowances.

(7) For the purpose of granting and withdrawing allowances the following forms are provided and their use enjoined: form 7367, "grant of annual allowances"; form 7369, "grant of special allowances"; form 7368, "withdrawal of annual allowances"; form 7370, "withdrawal of special allowances"; form 62, "purchase or stores requisition upon the chief clerk of the treasury department."

These forms will be serially numbered and kept in stock in the blank room of the bureau and the custodian thereof will be held responsible for the care and duly authorized issue of such forms. As required for issue, said forms will be supplied upon requisition therefor and the division of accounts notified of the numbers of the blanks so issued and to whom issued. The division of accounts will keep a check upon the allowance forms thus issued, and require that all numbered sheets be accounted for.

(8) Copies of all allowances granted and withdrawn will be furnished each day, as designated upon the printed forms, (*a*) to disbursing agents in the field service who are to pay the amounts of allowances granted, or to the proper requisitioners in case of the bureau service at Washington, (*b*) to the division of accounts, (*c*) to the auditor for the treasury department, except that, in lieu of furnishing copies of form 62 to the auditor, a copy of each order (chief clerk, treasury department, form 20A) based upon the requisitions made on said form 62 will continue to be furnished to the division of accounts, to be subsequently sent to the auditor with the voucher to which it pertains; (*d*) one copy to be retained as an office copy by the issuing division.

(9) In writing up allowance documents it is essential not only that the necessary details be given respecting the items sought to be allowed, as provided for upon the standard forms or as may be required, but that the documents show in every case the exact amount for which it is proposed to charge an appropriation. Separate documents will be used for each appropriation.

(10) Nothing in these regulations shall be construed to change the present method of estimating and allowing expenses or making an accounting for disbursements under indefinite appropriations, whether permanent (e. g., refunding taxes illegally collected) or annual (e. g., increase of compensation).

(11) These regulations will take effect beginning with the new fiscal year, July 1, 1919—June 30, 1920, and thereafter disbursing agents will be required to submit their accounts current (form 44) and schedules of disbursements (form 63, revised) *in duplicate*, one copy for the auditor and one copy to be retained in the files of the division of accounts.

(T. D. 2873, June 24, 1919.)

Income and excess profits taxes.

Modification of article 23, regulations 45, bases of computation of net income.

Article 23, regulations 45, is modified to read as follows:

ART. 23. *Bases of computation.*—(1) Approved standard methods of accounting will ordinarily be regarded as clearly reflecting income. A method of accounting will not, however, be regarded as clearly reflecting

income unless all items of gross income and all deductions are treated with reasonable consistency. See section 200 of the statute for definitions of "paid," "paid or accrued," and "paid or incurred." All items of gross income shall be included in the gross income for the taxable year in which they are received by the taxpayer, and deductions taken accordingly, unless in order clearly to reflect income such amounts are to be properly accounted for as of a different period. *For instance, in any case in which it is necessary to use an inventory, no accounting in regard to purchases and sales will correctly reflect income except an accrual method.* See section 213 (a) of the statute. A taxpayer is deemed to have received items of gross income which have been credited to or set apart for him without restriction. See article 53. On the other hand, appreciation in value of property is not even an accrual of income to a taxpayer prior to the realization of such appreciation through conversion of the property.

(2) *For the taxable year 1918 the true income, computed under the revenue act of 1918, and where the taxpayer keeps books of account in accordance with the method of accounting regularly employed in keeping such books, shall in all cases be entered in the return, even though this results in apparent omissions or duplications of particular items of income or expense. In the ordinary case such omissions and duplications are more apparent than real and are likely to counterbalance one another, so that the change in the basis of reporting calls for no material adjustment. Where, however, the method previously employed by the taxpayer in determining his income subject to the tax is materially different from the method regularly used by the taxpayer in keeping his accounts, or where for any reason the basis of reporting income subject to tax is changed, the taxpayer should attach to his return a separate statement setting forth for the taxable year and for the preceding year the classes of items differently treated under the two systems, specifying in particular all amounts duplicated or entirely omitted as the result of such change. Where, for example, a taxpayer who, prior to 1918, has reported on the so-called receipts basis is compelled under the above rule to report on the so-called accrual basis, he should include in the separate statement the following information:*

First, (a) expenses paid before the end of the taxable year 1917, but not accrued at that date; (b) income accrued at the end of the taxable year 1917 but not received at that date; (c) expenses accrued at the end of the taxable year 1917 but not paid at that date; (d) income received before the end of the taxable year 1917 but not accrued at that date; and

Second, similar items as of the end of the taxable year 1916.

If in the opinion of the commissioner such information indicates that the returns for any previous years did not reflect the true income, amended returns for such years *will* be required.

(3) *A taxpayer who changes the method of accounting employed in keeping his books for the taxable year 1919 or thereafter shall, before computing his income upon such new basis for purposes of taxation, secure the consent of the commissioner. Application for permission to change the basis of the return shall be made at least 30 days in advance of the date of filing return and shall be accompanied by a statement specifying the classes of items differently treated under the two systems and specifying all amounts which would be duplicated or entirely omitted as a result of the proposed change.*

(4) *Bank discounts.—Banks which in the past have treated discount as income before it was actually earned, and during the taxable year 1918 have placed the discount account upon an accrual basis, will be required to submit the information called for in paragraph 2 above and submit an amended return for the taxable year 1917, and will be permitted to submit (or the commissioner may require) amended returns for all prior years*

during which the taxpayer was subject to tax. Additional taxes for prior years found to be due upon such reexamination will be paid upon the basis of the amended returns in the ordinary way. Where it appears that prior taxes have been paid in excess of the amount properly due, such excess will, to the extent possible, be credited against future income and profits taxes under the provisions of section 252 of the revenue act of 1918.

(T. D. 2876, June 25, 1919.)

Income tax—Nonresident aliens—Decision of court.

1. INCOME TAXES—NONRESIDENT ALIENS—PROPERTY OWNED IN UNITED STATES.

The income received by a nonresident alien from stocks and bonds of corporations organized under the laws of the United States and bonds and mortgages secured upon property in the United States, the certificates representing the same being held by a Philadelphia trust company under a power of attorney which gave authority to the agent to sell, assign, or transfer any of them and to invest and reinvest the proceeds, is property owned in the United States within the meaning of the act of October 3, 1913.

2. JUDGMENT REVERSED.

Judgment of the district court for the eastern district of Pennsylvania (239 Fed., 568) reversed.

The appended decision of the United States supreme court in the case of *Emily R. De Ganay v. Lederer, collector,* is published for the information of internal-revenue officers and others concerned.

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1918. No. 319.

Emily R. De Ganay v. Ephraim Lederer, collector of internal revenue. Certificate from the United States circuit court of appeals for the third circuit.

[June 9, 1919.]

Mr. Justice DAY delivered the opinion of the court:

The act of October 3, 1913 (c. 16, sec. 2a, subdivision 1, 38 Stat., 166) provides—

That there shall be levied, assessed, collected, and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.

Under this statutory provision a question arose as to the taxability of income from certain securities of Emily R. De Ganay, a citizen and resident of France. The district court of the United States for the eastern district of Pennsylvania held the income from the securities taxable. (239 Fed., 568.) The case is here upon certificate from the circuit court of appeals from which it appears that Emily R. De Ganay is a citizen of France, and resides in that country, that her father was an American citizen domiciled in Pennsylvania, and died in 1885, having devised one-fourth of his residuary estate, consisting of real property, to the Pennsylvania Co. for Insurance on Lives and Granting Annuities, in trust to pay the net income thereof to her. She also inherited from her father a large amount of personal property in her own right free from any trust. This personal

property is invested in stocks and bonds of corporations organized under the laws of the United States and in bonds and mortgages secured upon property in Pennsylvania. Since 1885 the Pennsylvania company has been acting as her agent under power of attorney, and has invested and reinvested her property, and has collected and remitted to her the net income therefrom. The certificates of stocks, bonds, and mortgages have been and were in 1913 in the company's possession in its offices in Philadelphia. The company made a return of the income collected for the plaintiff for the year 1913 both from her real estate, which is not in controversy here, and her net income from corporate stocks and bonds, and bonds and mortgages held by her in her own right. The tax was paid under protest and recovery was sought by the proper action.

The question certified is limited to the net income collected by virtue of the power of attorney from the personal property owned by the plaintiff in her own right.

The power of attorney, which is attached to the certificate, authorizes the agent—

To sell, assign, transfer any stock, bonds, loans, or other securities now standing or that may hereafter stand in my name on the books of any and all corporations, national, state, municipal, or private, to enter satisfaction upon the record of any indenture or mortgage now or hereafter in my name, or to sell and assign the same and to transfer policies of insurance, and the proceeds, also any other moneys to invest and reinvest in such securities as they may in their discretion deem safe and judicious to hold for my account; to collect and receipt for all interest and dividends, loans, stocks, or other securities now or hereafter belonging to me, to indorse cheques payable to my order and to make or enter into any agreement or agreements they may deem necessary and best for my interest in the management of my business and affairs, also to represent me and in my behalf to vote and act for me at all meetings connected with any company in which I may own stocks or bonds or be interested in any way whatever, with power also as attorney or attorneys under it for that purpose to make and substitute, and to do all lawful acts requisite for effecting the premises, hereby ratifying and confirming all that the said attorney or substitute or substitutes shall do therein by virtue of these presents.

The question certified is, If an alien nonresident owns stocks, bonds, and mortgages secured upon property in the United States or payable by persons or corporations there domiciled; and if the income therefrom is collected for and remitted to such nonresident by an agent domiciled in the United States, and if the agent has physical possession of the certificates of stock, the bonds, and the mortgages, is such income subject to an income tax under the act of October 3, 1913?

The question submitted comes to this, Is the income from the stocks, bonds, and mortgages held by the Pennsylvania company derived from property owned in the United States? A learned argument is made to the effect that the stock certificates, bonds, and mortgages are not property, that they are but evidences of the ownership of interests which are property; that the property, in a legal sense, represented by the securities, would exist if the physical evidences thereof were destroyed. But we are of opinion that these refinements are not decisive of the congressional intent in using the term "property" in this statute. Unless the contrary appears, statutory words are presumed to be used in their ordinary and usual sense, and with the meaning commonly attributable to them. To the general understanding and with the common meaning usually attached to such descriptive terms, bonds, mortgages, and certificates of stock are regarded as property. By state and federal statutes they are often treated as property, not as mere evidences of the interest which they represent. In

Blackstone v. Miller (188 U. S., 189, 206) this court held that a deposit by a citizen of Illinois in a trust company in the city of New York was subject to the transfer tax of the state of New York and said:

There is no conflict between our views and the point decided in the case reported under the name of "State tax on foreign-held bonds" (15 Wall., 300). The taxation in that case was on the interest on bonds held out of the state. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon v. Hooker* (177 Mass., 335, 337).

The court of appeals of New York, recognizing the same principle, treated such instruments as property in *People ex rel. Jefferson v. Smith* (88 N. Y., 576, 585):

It is clear from the statutes referred to and the authorities cited and from the understanding of business men in commercial transactions, as well as of jurists and legislators, that mortgages, bonds, bills, and notes have for many purposes come to be regarded as property and not as the mere evidences of debts, and that they may thus have a situs at the place where they are found like other visible, tangible chattles.

We have no doubt that the securities herein involved are property. Are they property within the United States? It is insisted that the maxim "mobilia sequuntur personam" applies in this instance; and that the situs of the property was at the domicile of the owner in France. But this court has frequently declared that the maxim, a fiction at most, must yield to the facts and circumstances of cases which require it, and that notes, bonds, and mortgages may acquire a situs at a place other than the domicile of the owner and be there reached by the taxing authority. It is only necessary to refer to some of the decisions of this court. *New Orleans v. Stempel* (175 U. S., 309); *Bristol v. Washington County* (177 U. S., 133); *Blackstone v. Miller*, supra; *State Board of Assessors v. Comptoir National D'Escompte* (191 U. S., 388); *Carstairs v. Cochran* (193 U. S., 10); *Scottish Union & National Insurance Co. v. Bowland* (196 U. S., 611); *Wheeler v. New York* (233 U. S., 434, 439); *Iowa v. Slimmer* (248 U. S., 115, 120). Shares of stock in national banks, this court has held, for the purpose of taxation, may be separated from the domicile of the owner and taxed at the place where held. *Tappan v. Merchants National Bank* (19 Wall., 490).

In the case under consideration the stocks and bonds were those of corporations organized under the laws of the United States and the bonds and mortgages were secured upon property in Pennsylvania. The certificates of stock, the bonds, and mortgages were in the Pennsylvania company's offices in Philadelphia. Not only is this so, but the stocks, bonds, and mortgages were held under a power of attorney which gave authority to the agent to sell, assign, or transfer any of them and to invest and reinvest the proceeds of such sales as it might deem best in the management of the business and affairs of the principal. It is difficult to conceive how property could be more completely localized in the United States. There can be no question of the power of congress to tax the income from such securities. Thus situated and held, and with the authority given to the local agent over them, we think the income derived is clearly from property within the United States within the meaning of congress as expressed in the statute under consideration.

It follows that the question certified by the circuit court of appeals must be answered in the affirmative. So ordered.

Mr. Justice McReynolds took no part in this case.