

REPORTS OF REFUNDS AND CREDITS  
FOR THE CALENDAR YEARS  
1936, 1937, AND 1938

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LETTER

FROM

THE CHAIRMAN, JOINT COMMITTEE ON  
INTERNAL REVENUE TAXATION

TRANSMITTING

REPORTS COVERING REFUNDS AND CREDITS  
OF INTERNAL REVENUE TAXES FOR THE  
CALENDAR YEARS 1936, 1937, AND 1938



MAY 21, 1940.—Referred to the Committee on Ways and Means  
and ordered to be printed

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UNITED STATES  
GOVERNMENT PRINTING OFFICE  
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## LETTER OF TRANSMITTAL

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JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,  
*Washington, May 21, 1940.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: Pursuant to section 3777 of the Internal Revenue Code, I have the honor to submit reports by the Joint Committee on Internal Revenue Taxation, dated May 21, 1940, covering refunds and credits of internal-revenue taxes for the calendar years 1936, 1937, and 1938.

Very respectfully,

R. L. DOUGHTON, *Chairman.*

## REPORTS OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

(Pursuant to the Internal Revenue Code)

WASHINGTON, D. C., *May 21, 1940.*

Section 3777 of the Internal Revenue Code provides as follows in connection with refunds and credits in excess of \$75,000:

SEC. 3777. REPORTS OF REFUNDS AND CREDITS IN EXCESS OF \$75,000.

(a) By Commissioner to joint committee: No refund or credit of any income, war-profits, excess-profits, estate, or gift tax in excess of \$75,000 shall be made until after the expiration of thirty days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Commissioner is submitted to the Joint Committee on Internal Revenue Taxation.

(b) By joint committee to Congress: A report to Congress shall be made annually by such committee of such refunds and credits, including the names of all persons and corporations to whom amounts are credited or payments are made, together with the amounts credited or paid to each.

In accordance with the above provisions of law, the joint committee has caused its staff to examine all such refunds and credits made by the Commissioner during the calendar years 1936, 1937, and 1938, and to submit reports thereon. Since the reports, in this particular instance, are being submitted under the same date, all are included in one volume.

Section I contains lists of the names of all persons to whom refunds or credits have been made and shows the amounts paid or credited to each. The committee approves these lists and states that they agree with the records of the Treasury Department.

While it is not required by law, the committee deems it advisable also to submit to the Congress section II, general surveys of the refunds and credits, and section III, analyses of the cases. These sections are not specifically approved or disapproved.

There are also included as appendices to each report an analysis of overassessments in excess of \$20,000, which have been prepared by the Treasury Department, and comparative tables of overassessment allowances and interest prepared by the staff.

Respectfully,

R. L. DOUGHTON, *Chairman.*

## LETTER OF SUBMITTAL

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CONGRESS OF THE UNITED STATES,  
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,  
Washington, D. C., 1940.

HON. ROBERT L. DOUGHTON,  
*Chairman, Joint Committee on Internal Revenue Taxation,*  
*Washington, D. C.*

MY DEAR MR. CHAIRMAN: There are submitted herewith reports on refunds and credits of internal-revenue taxes in excess of \$75,000 as required by section 3777 of the Internal Revenue Code. These reports cover the calendar years 1936, 1937, and 1938, and inasmuch as all are being presented under the same date they are included in one volume.

The most important facts and conclusions with respect to each report will be found in the summary.

Respectfully submitted.

WALTER L. TUCKER, *Attorney.*

Approved:

G. D. CHESTEEN,  
*Assistant Chief of Staff.*

COLIN F. STAM,  
*Chief of Staff.*

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## REPORTS ON REFUNDS AND CREDITS OF INTERNAL REVENUE TAXES, 1936, 1937, AND 1938

### FOREWORD

This volume, consisting of reports on refunds and credits of internal-revenue taxes for the calendar years 1936, 1937, and 1938, is divided into three sections.

Section I consists of lists of refunds and credits in excess of \$75,000 allowed in the respective years, which lists are required to be reported to the Congress under section 3777 of the Internal Revenue Code.

Section II consists of general surveys of the refunds and credits for each of the years.

Section III contains analyses of the cases reported to the joint committee during this period.

Each section is composed of three parts. Part I of each section covers refunds and credits reported to the joint committee during the calendar year 1936; part II of each section, the calendar year 1937; and part III of each section, the calendar year 1938.

An analysis of overassessments in excess of \$20,000 has been prepared for each of the above-mentioned years by the Treasury Department and is included as an appendix to each report. There are also included as appendixes comparative tables of overassessment allowances and interest prepared by the staff of the committee.

### SUMMARY

The most important facts in connection with the 1936, 1937, and 1938 refunds and credits which will be presented may be summarized, respectively, as follows:

	<i>1936</i>	
1. Total refunds paid-----		\$601, 516. 61
On cases reported-----	\$470, 763. 86	
On cases previously reported and with- held, allowed during 1936-----	130, 752. 75	
2. Total credits allowed (not including interest)-----		3, 897, 616. 15
On cases reported-----	\$1, 713, 038. 46	
On cases previously reported and with- held, allowed during 1936-----	2, 184, 577. 69	
3. Total refunds and credits-----		4, 499, 132. 76
4. Percentage of refunds to total refunds and credits-----		13. 36
5. Total interest allowed-----		1, 631, 185. 82
On cases reported-----	\$698, 274. 96	
On cases previously reported and with- held, allowed during 1936-----	932, 910. 86	
6. Interest paid (cash)-----		685, 704. 78
Interest credited, or offset against taxes due in other years--		945, 481. 04
7. Total cash payments-----		1, 287, 221. 39
Refunds-----	\$601, 516. 61	
Interest-----	685, 704. 78	

## 1936

8. Total credit allowances (including interest)----- \$1, 843, 097. 19  
 Credits----- \$3, 897, 616. 15  
 Interest----- 945, 481. 04
9. Principal causes of refunds and credits:  
 Depreciation, 42 percent.  
 Ordinary and necessary business expenses, 19 percent.  
 Excess collections, 17 percent.  
 Amortization of bond discount, 15 percent.  
 Income taxable to husband instead of wife, 7 percent.
10. Disposition of cases:  
 12 cases reported to the committee.  
 12 cases concurred in by the staff.

## 1937

1. Total refunds paid----- \$1, 683, 026. 07  
 On cases reported----- \$1, 394, 962. 95  
 On cases previously reported and with-  
 held, allowed during 1937----- 288, 063. 12
2. Total credits allowed (not including interest)----- 2, 026, 789. 44  
 On cases reported----- \$869, 164. 90  
 On cases previously reported and with-  
 held, allowed during 1937----- 1, 157, 624. 54
3. Total refunds and credits----- 3, 709, 815. 51
4. Percentage of refunds to total refunds and credits----- 46. 36
5. Total interest allowed----- 1, 538, 831. 42  
 On cases reported----- \$644, 078. 32  
 On cases previously reported and with-  
 held, allowed during 1937----- 894, 753. 10
6. Interest paid (cash)----- 493, 985. 92  
 Interest credited, or offset against taxes due in other years-- 1, 044, 845. 50
7. Total cash payments----- 2, 177, 011. 99  
 Refunds----- \$1, 683, 026. 07  
 Interest----- 493, 985. 92
8. Total credit allowances (including interest)----- 3, 071, 634. 94  
 Credits----- \$2, 026, 789. 44  
 Interest----- 1, 044, 845. 50
9. Principal causes of refunds and credits:  
 Determination of capital net gains and losses, 20 percent.  
 Estate tax, 15 percent.  
 Depreciation, 14 percent.  
 Loss on sale of assets, 12 percent.  
 Dividends of domestic corporations, 9 percent.  
 Affiliation, 6 percent.
10. Disposition of cases:  
 22 cases reported to the committee.  
 1 case returned by the staff (deemed not within jurisdiction of committee).  
 18 cases concurred in by the staff.  
 3 cases criticized, 2 of which were heard by the committee; these 3 cases  
 were disposed of as follows:

Name and address	Amount in- volved	Action taken
Commercial Trust Co. of New Jersey, trustee under Morris Guggenheim Trust for Lucile G. Bonar, Jersey City, N. J.	\$99, 336. 59	Allowed as originally proposed.
Ferrocarril del Pacifico de Niearagua, Portland, Maine.	372, 879. 06	Withdrawn by Bureau.
Group No. 1 Oil Corporation, Ponca City, Okla. ....	438, 300. 88	Reduced to \$20, 014. 26.

1938

1. Total refunds paid		\$3, 059, 204. 59
On cases reported	\$3, 044, 831. 07	
On cases previously reported and with- held, allowed during 1938	14, 373. 52	
2. Total credits allowed (not including interest)		4, 156, 013. 56
On cases reported	\$3, 141, 024. 23	
On cases previously reported and with- held, allowed during 1938	1, 014, 989. 33	
3. Total refunds and credits		7, 215, 218. 15
4. Percentage of refunds to total refunds and credits		42. 39
5. Total interest allowed		2, 471, 018. 62
On cases reported	\$1, 384, 556. 26	
On cases previously reported and with- held, allowed during 1938	1, 086, 462. 36	
6. Interest paid (cash)		962, 650. 00
Interest credited, or offset against taxes due in other years		1, 508, 368. 62
7. Total cash payments		4, 021, 854. 59
Refunds	\$3, 059, 204. 59	
Interest	962, 650. 00	
8. Total credit allowances (including interest)		5, 664, 382. 18
Credits	\$4, 156, 013. 56	
Interest	1, 508, 368. 62	
9. Principal causes of refunds and credits:		
Ordinary and necessary business expenses, 19 percent.		
Depreciation, 18 percent.		
Deficiencies in tax summarily assessed, 11 percent.		
Estate tax, 8 percent.		
Capital gains and losses, 7 percent.		
10. Disposition of cases:		
39 cases reported to the committee.		
35 cases concurred in by the staff.		
4 cases criticized by the staff and disposed of as follows:		

Name and address	Amount involved	Action taken
A. Atwater Kent	\$112, 818. 90	Allowed as originally proposed.
Atwater Kent Manufacturing Co., Philadelphia, Pa.	141, 348. 24	Case still pending.
Consolidated Gas Co	254, 841. 49	
New York & Queens Electric Power Co., New York, N. Y.	210, 452. 02	
International Business Machines Corporation, New York, N. Y.	85, 077. 24	Allowed as originally proposed.
International Match Corporation, New York, N. Y.	1, 951, 275. 50	Do.



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SECTION I

LISTS OF REPORTS AND CREDITS

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## PART I

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation during the calendar year 1936 by the Commissioner of Internal Revenue, under the provisions of sec. 710 of the Revenue Act of 1928

Name and address of taxpayer	Years involved	Credits	Refunds	Original and additional assessments	Net over-assessments allowed	Previously allowed	Final tax collected	Interest	Percent tax reduction
JANUARY									
No cases reported.....									
FEBRUARY									
Georgia Power Co., Atlanta, Ga.....	1923, 1926.....	\$85,006.65		\$301,822.91	\$85,006.65		\$216,816.26	\$26,478.56	28.16
MARCH									
Dodge Bros., Inc., Hamtramck, Mich.....	1926 to 1928, inclusive.....	764,707.82	\$157,499.31	4,788,655.05	922,207.13		3,866,447.92	434,793.63	19.26
Southern California Gas Co., Los Angeles, Calif.....	1931.....	112,299.54	5,850.42	310,954.08	118,158.96	\$148.31	192,646.81	14,731.81	38.05
APRIL									
No cases reported.....									
MAY									
American Printing Co., Fall River, Mass.....	1922, 1927.....		117,714.15	462,780.70	117,714.15		345,066.55	61,445.09	25.44
JUNE									
Commonwealth Edison Co., Chicago, Ill.....	1929, 1930.....	146,706.00		4,540,051.23	146,706.00	18,333.91	4,375,011.32	42,512.87	3.64
JULY									
Merck, Clara, estate of, Alien Property Custodian Trust No. 47659, Washington, D. C.....	1919.....								
Merck, Dr. E. A., estate of, Alien Property Custodian Trust No. 47655, Washington, D. C.....	1919.....								
Merck, Emily, Alien Property Custodian Trust No. 47660, Washington, D. C.....	1919.....								
Merck, Dr. Willy, estate of, Alien Property Custodian Trust No. 47656, Washington, D. C.....	1919.....								

† Entire overassessment withheld in connection with proposed deficiencies for 1917.

## PART I—Continued

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation during the calendar year 1936 by the Commissioner of Internal Revenue, under the provisions of sec. 710 of the Revenue Act of 1928—Continued

Name and address of taxpayer	Years involved	Credits	Refunds	Original and additional assessments	Net overassessments allowed	Previously allowed	Final tax collected	Interest	Percent tax reduction
AUGUST									
Judson (Mrs.), Belle K., Grosse Pointe Park, Mich.	1929	\$142,493.14		\$142,493.14	\$142,493.14			\$46,358.10	100.00
Pacific Gas & Electric Co., San Francisco, Calif.	1926 to 1928, inclusive	210,419.29	\$73,496.01	3,206,648.54	283,915.30		\$2,922,733.24	37,838.15	8.85
SEPTEMBER									
Shell Union Oil Corporation, New York, N. Y.	1927, 1928	251,406.02	116,194.97	1,957,205.66	357,600.99		1,589,604.67	34,116.75	18.78
OCTOBER									
No cases reported									
NOVEMBER									
No cases reported									
DECEMBER									
No cases reported									
Total		1,713,038.46	470,763.86	15,710,611.31	2,183,802.32	\$18,482.22	13,508,326.77	698,274.96	

## Overassessments previously withheld, allowed during the year 1936

Date reported	Name and address of taxpayer	Years involved	Credits	Refunds	Original and additional assessments	Net overassessments allowed	Previously allowed	Final tax collected	Interest	Cause of delay of settlement
1929										
May	Equitable Life Assurance Society of the United States, New York, N. Y.	1922 to 1923		\$54,923.13		\$54,923.13			\$33,180.35	Withheld for adjustment in connection with proposed deficiency for the years 1924, 1925, and 1926.

1931 February	Wolverine Petroleum Corporation, St. Louis, Mo.	1924 to 1926	\$20,952.84		20,952.84	\$11,306.02	9,419.41	Withheld the amount of \$32,258.86 for adjustment in connection with a proposed deficiency for 1923. Subsequent to this adjustment taxpayer filed suit in the Court of Claims and as a result of a Department of Justice settlement the overassessment for 1924 was reduced to \$4,966.73 and allowed on a different basis and additional amounts allowed for the years 1925 and 1926.
1932 January	Brier Hill Steel Co., transferor, the Youngstown Sheet & Tube Co., transferee, Youngstown, Ohio <sup>1</sup> .	1918, 1919	736,975.83	\$1,083,411.47	736,975.83	505,811.33	20,697.07	Withheld by Comptroller General on account of deficiencies against Youngstown Sheet & Tube Co. which were under appeal.
1933 April	Pennsylvania Railroad Co. and subsidiaries, Philadelphia, Pa.	1921	233,762.21		233,762.21		208,485.72	Withheld for adjustment in connection with proposed deficiency for 1927.
1934 January	Piggly Wiggly Corporation, Cincinnati, Ohio.	1922	16,846.41		16,846.41		12,959.50	Withheld for adjustment in connection with proposed deficiencies for 1930 and 1931.
1935 September	South Penn Oil Co., Pittsburgh, Pa.	1929		75,829.62	75,829.62	272,211.04	27,740.14	Withheld pending supplemental report on valuations.
Do	Anderson, Clayton & Co., Houston, Tex. <sup>2</sup>	1918	46,228.54		46,228.54		69,392.06	Withheld for adjustment in connection with proposed deficiencies for the years 1930-32.
December	Standard Oil Co. of New York and subsidiaries (now Socony Vacuum Oil Co., Inc.), New York, N. Y. <sup>3</sup>	1922 to 1925, inclusive.	1,129,811.86	8,079,093.01	1,129,811.86	6,807,396.40	551,036.61	Withheld pending settlement of deficiencies for 1920, 1923, 1926, 1927, and 1928.
	Total		2,184,577.69	130,752.75	10,545,142.315	330.44	7,595,724.79	932,910.86

<sup>1</sup> Withheld for adjustment in connection with proposed deficiencies against Youngstown Sheet & Tube Co. for the years 1924 to 1928, inclusive, \$440,024.31; also \$10,057.81 of interest withheld.

<sup>2</sup> Withheld for adjustment in connection with proposed deficiencies for the years 1930-32, \$33,500. (Amount of refunds reported in 1935 refund report adjusted to \$69,271.46.)

<sup>3</sup> Withheld for adjustment in connection with proposed deficiencies for the years 1929 and 1930, \$141,884.75.



AUGUST		1925	106,724.16	106,724.16	106,724.16	106,724.16	55,970.24	100.00
Taylor, Henry R., estate of, New York, N. Y.								
Havana Electric Railway, Light & Power Co. and subsidiary, New York, N. Y.		1913 to 1918	179,520.88	179,520.88	179,520.88	407,859.39	182,277.16	30.62
SEPTEMBER								
No cases reported								
OCTOBER								
Ferrocarril del Pacifico de Nicaragua, Portland, Maine. <sup>3</sup>		1919, 1920, 1923, to 1928						
King, Edward J., estate of, New York, N. Y.		1935	77,270.84	77,270.84	77,270.84	225,785.78	4,559.34	25.50
Piedmont Development Corporation, Wilmington, Del.		1935	83,875.94	83,875.94	83,875.94		11,037.40	100.00
Quinn, Mrs. Florence M., Los Angeles, Calif.		1927 to 1931	240,604.13	240,604.13	240,604.13	314,604.47	103,208.93	43.34
NOVEMBER								
Battison, Mrs. Lucy Smith, Los Angeles, Calif.		1931, 1934	76,643.59	76,643.59	76,643.59		21,488.04	100.00
DECEMBER								
The Bloch Brothers Tobacco Co, Wheeling, W. Va. <sup>4</sup>								
Brown Shoe Company, Inc., St. Louis, Mo.		1931 to 1933	25,033.96	68,342.15	713,001.29	93,376.11	23,686.57	13.10
Ewing, Thomas, Jr., estate of, New York, N. Y.		1933	242,759.02	146,212.17	275,000.00	146,212.17	128,787.83	53.17
Hearst, William Randolph, New York, N. Y.		1930	90,159.69	609,494.88	609,494.88	242,759.02	96,056.85	39.83
Hoyt, John Sherman, New York, N. Y.		1930	869,164.90	1,394,962.95	90,159.69	90,159.69	22,603.53	100.00
Total			76,643.59	6,060,331.07	2,264,127.85	2,478.94	3,783,724.28	644,078.32

<sup>1</sup> Adjustments include years ended Mar. 31, 1926; Mar. 31, 1927; Mar. 31, 1928; and period Apr. 1, 1928, through Dec. 31, 1928. The other overassessments were canceled.

<sup>2</sup> Entire overassessments withheld in connection with proposed deficiencies of American Water Works for 1929.

<sup>3</sup> Disallowed because of expiration of statutory period for filing refund claim.

<sup>4</sup> Case returned to Bureau as not coming within the jurisdiction of the joint committee. Monthly assessments, October 1933 to May 1935.

## Overassessments previously withheld, allowed during the year 1937

Date reported	Name and address of taxpayer	Years involved	Credits	Refunds	Original and additional assessments	Net over-assessments allowed	Previously allowed	Final tax collected	Interest	Cause of delay of settlement
1931 March	Kansas City Southern Ry. Co., Kansas City, Mo.	1926, 1927	---	\$109,860.95	\$599,388.99	\$109,860.95	---	\$489,528.04	\$56,870.78	Withheld in connection with proposed deficiencies for 1918, 1919, 1920, and 1925; also held in abeyance pending the outcome of appeals covering the years 1920, 1922 to 1925, inclusive, then pending before the United States Board of Tax Appeals.
1932 June	James (Mr.), Arthur Curtis, New York, N. Y.	1920	---	178,202.17	---	178,202.17	---	---	165,703.81	Withheld in connection with proposed deficiency for 1919.
1934 December	Detroit Edison Co., Detroit, Mich.	1929 to 1930	\$67,642.36	---	---	67,642.36	---	---	21,956.80	Withheld in connection with proposed deficiency for 1931.
1935 April	Metropolitan Life Insurance Co., New York, N. Y.	1924 to 1926	909,597.43	---	---	909,597.43	---	---	534,546.29	Withheld in connection with proposed deficiencies for 1930 to 1932, inclusive.
September	Anderson, Clayton & Co., Houston, Tex. (for William L. Clayton, Benjamin Clayton, and Monroe D. Anderson, surviving partners).	1918	38,500.00	---	---	38,500.00	---	---	26,217.97	Do.
December	Standard Oil Co. of New York and subsidiaries, New York, N. Y.	1922 to 1925	141,884.75	---	---	141,884.75	---	---	89,457.36	Withheld in connection with proposed deficiencies for 1920, 1923, 1926, 1927, and 1928.
	Total		1,157,624.54	288,063.12	599,388.99	1,445,687.66	---	489,528.04	804,753.10	

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation during the calendar year 1938 by the Commissioner of Internal Revenue, under the provisions of sec. 710 of the Revenue Act of 1938

PART III

Name and address of taxpayer	Years involved	Abate-ments	Credits	Refunds	Original and additional assessments	Net over-assessments allowed	Previous-ly allowed	Final tax collected	Interest	Percent tax re-duction
JANUARY										
No cases reported.....										
FEBRUARY										
Kent, (Mr.) A. Atwater, Philadelphia, Pa.	1929.....			\$112,818.90	\$1,009,293.14	\$112,818.90		\$896,474.24	\$52,609.15	11.18
Atwater Kent Manufacturing Co., Philadelphia, Pa.	1930, 1931.....		\$141,348.24		141,348.24	141,348.24			61,811.41	100.00
The Timken Roller Bearing Co., Canton, Ohio. <sup>1</sup>	1919.....			75,907.20	2,932,603.05	75,907.20		2,854,340.29	78,613.86	2.67
MARCH										
Crane, Richard T., Jr., estate of, Chicago, Ill.	1931.....			82,179.99	1,390,585.09	82,179.99		1,298,405.10	14,462.55	5.95
Given, T. H., estate of, Pittsburgh, Pa.	1935.....		96,193.75		96,193.75	96,193.75			7,437.54	100.00
Lasker, Albert D., Lake Forest, Ill.	1932, 1935.....		221,559.02		355,274.54	221,559.02	\$5,409.92	128,305.60	27,137.87	63.89
Von Opel, Fritz, Zurich, Switzerland <sup>2</sup>	1931.....	\$20,391.69		671,662.46	851,644.07	692,054.15		159,589.92	58,619.57	81.26
APRIL										
Smith, Ormand G. (deceased), New York, N. Y.	1930 to 1933.....			141,512.29	446,533.59	141,512.29		305,021.30	14,709.52	31.69
MAY										
Fox Film Corporation, New York, N. Y.	1930.....		140,000.00		140,000.00	140,000.00				100.00
osefowitz, (Mr. and Mrs.) Zelik, Zurich, Switzerland. <sup>3</sup>	1935 and Jan. 1 to Feb. 19, 1936.....	223,411.41	105,665.68	96,099.77	425,510.03	425,176.86		333.17	25,217.54	100.00
JUNE										
Atchison, Topeka & Santa Fe Railway Co., Chicago, Ill.	1924.....			78,199.25	5,651,558.86	78,199.25	12,481.72	5,560,877.89	59,662.81	1.90
Employers' Liability Assurance Corporation, Ltd., Boston, Mass.	1932 to 1934.....			204,123.77	522,283.72	204,123.77		318,159.95	51,937.68	39.08
International Business Machines Corporation, New York, N. Y.	1928 to 1930, 1932.....		82,990.05	2,087.19	2,657,989.21	85,077.24	35,118.92	2,537,793.05	29,531.72	4.52

<sup>1</sup> Withheld for 1933, 1934, and 1935 deficiencies, \$2,355.56.

<sup>2</sup> Withheld 10-percent interest amounting to \$6,513.29 in accordance with sec. 143 (b), Revenue Act of 1936.

<sup>3</sup> Withheld 10-percent interest amounting to \$2,801.54 in accordance with sec. 143 (b), Revenue Act of 1935.

## PART III—Continued

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation during the calendar year 1938 by the Commissioner of Internal Revenue, under the provisions of sec. 710 of the Revenue Act of 1928—Continued

Name and address of taxpayer	Years involved	Abate-ments	Credits	Refunds	Original and additional assessments	Net over-assessments allowed	Previous-ly allowed	Final tax collected	Interest	Percent tax re-duction
JUNE—continued										
International Match Corporation, New York, N. Y. <sup>4</sup>	1929 to 1931									
Mohawk Hudson Power Corporation and subsidiaries, Buffalo, N. Y.	1926 to 1928		\$310, 151.34		\$1, 745, 972.49	\$310, 151.34		\$1, 435, 821.15	\$177, 293.16	17.76
New York Power & Light Corporation (formerly Adirondack Power & Light Corporation), Albany, N. Y.	1926		81, 239.32		206, 807.39	81, 239.32	\$13, 479.62	112, 088.45	36, 121.36	45.80
New York Power & Light Corporation, Albany, N. Y. <sup>5</sup>	1927, 1928		44, 019.91		61, 085.40	44, 019.91			2, 582.78	100.00
Niagara Lockport & Ontario Power Co., Buffalo, N. Y.	1926 to 1928		195, 507.92		1, 019, 659.81	195, 507.92		824, 151.89	108, 219.02	19.17
The North Virginia Corporation, New York, N. Y.	1934			\$135, 813.47	217, 250.54	135, 813.47		81, 437.07	26, 390.18	62.51
Tyler, Marion C., estate of, Cleveland, Ohio.	1933			111, 365.86	155, 682.98	111, 365.86		44, 317.12	27, 951.31	71.53
JULY										
Anglo-Canadian Mining & Refining Co., Ltd., Copper Cliff, Ontario, Canada, <sup>6</sup>	1936				546, 750.00	273, 375.00		273, 375.00	16, 456.80	50.00
Cumberland County Power & Light Co., Portland, Maine.	1926			81, 185.65	119, 699.04	81, 185.65		38, 513.39	54, 496.92	67.82
Lloyd (Mrs.), Madge Bird, Chicago, Ill.	1934 to 1936				183, 471.27	120, 491.92		62, 979.35	12, 172.45	65.67
Vanderbilt, William K., estate of, New York, N. Y.	1934 to 1936			79, 051.73	79, 051.73	79, 051.73			9, 470.54	100.00
AUGUST										
American Securities Investing Corpora-tion, New York, N. Y.	1933			329, 414.06	789, 773.96	329, 414.06		460, 359.90	55, 869.62	41.71
Bingham, Mary Lily (Flagler), estate of, New York, N. Y. <sup>7</sup>	1934, 1936									
Donner, William H., Philadelphia, Pa. <sup>8</sup>	1933									
Pratt, Charles M., estate of, New York, N. Y.	1935			160, 958.93	9, 075, 125.76	160, 958.93		8, 914, 166.83	11, 856.73	1.77
Pratt, George D., estate of, Brooklyn, N. Y.	1935			369, 632.05	4, 583, 049.78	369, 632.05		4, 213, 417.73	59, 201.89	8.07

SEPTEMBER		1923 to 1926	121,842.63	32,191.94	613,163.40	154,034.57	13,297.43	445,831.40	109,784.59	27.29
San Joaquin Light & Power Corporation, Fresno, Calif.										
OCTOBER										
American Light & Traction Co., Chicago, Ill.		1924, 1925 to 1937	161,270.00		2,583,122.98	161,270.00	476.28	2,421,376.70	101,427.88	6.26
C. J. Devine & Co., Inc., New York, N. Y.		1934, 1935		80,626.56	89,401.70	80,626.56	13.06	8,762.08	13,213.00	90.20
NOVEMBER										
Bates Manufacturing Co., Augusta, Maine.		1917 to 1921		200,000.00	200,000.00	200,000.00				100.00
Consolidated Gas Co. of New York and subsidiaries, New York, N. Y. <sup>8</sup>		1918 to 1922, 1925, 1928.								
Union Trust Co. of Pittsburgh and Union Savings Bank of Pittsburgh, Pa. <sup>10</sup>		1932 to 35								
DECEMBER										
Marie Bremer Trust, St. Paul, Minn.		1936	95,848.00		95,848.00	95,848.00			7,752.86	100.00
A. Overholt & Co., Inc., New York, N. Y.		1934, 1935	79,824.02		233,450.88	79,824.02		153,626.86	14,712.08	34.19
Snerry Flour Co., Minneapolis, Minn.		1937	223,278.16		223,278.16	223,278.16			14,293.54	100.00
Washburn Crosby Co., Inc., South Minneapolis, Minn.		1937	403,860.85		441,384.95	403,860.85		37,524.10	25,024.32	91.50
Washburn Crosby Co., Inc., Minneapolis, Minn.		1937	242,558.42		242,558.42	242,558.42			15,514.11	100.00
Total			243,803.10	3,044,831.07	40,116,406.02	6,429,658.40	80,276.95	33,587,049.62	1,384,556.26	

<sup>4</sup> Withheld pending investigation.  
<sup>5</sup> The amount of \$17,965.49 of the 1927 overassessment withheld in connection with deficiencies for 1930, 1931, 1934, and 1935.  
<sup>6</sup> Withheld \$2,904.14 interest (sec. 144 (a), Revenue Act of 1936).  
<sup>7</sup> Entire overassessment withheld for 1935 deficiency which is on appeal.  
<sup>8</sup> Entire overassessment withheld for 1934, 1935, and 1936 deficiencies which are on appeal.  
<sup>9</sup> Withheld pending investigation.  
<sup>10</sup> Unadjusted—pending before Comptroller General.

and the entire 1928 overassessment of \$87,483.81 withheld in con-

## Overassessments previously withheld during the year 1938

Date reported	Name and address of taxpayer	Years involved	Credits	Refunds	Net over-assessments allowed	Interest	Cause of delay of settlement
1931 May.....	Louisville Gas & Electric Co., of Delaware, Louisville, Ky.	1922 to 1925.....	\$21,186.75	-----	\$21,186.75	\$19,654.79	Withheld in connection with proposed deficiencies for 1927 and 1928.
1932 October.....	Western Power Corporation, New York, N. Y.	1920 to 1923.....	-----	14,373.52	14,373.52	12,171.61	Withheld in connection with proposed deficiency for 1930.
Do.....	Brier Hill Steel Co., transferor, the Youngstown Sheet & Tube Co., transferee, Youngstown, Ohio.	1918, 1919.....	440,624.31	-----	440,624.31	495,327.30	Withheld in connection with proposed deficiencies for 1924 to 1928, inclusive, against Youngstown Sheet & Tube Co.
1933 July.....	The Equitable Trust Co., of New York, the Chase National Bank, transferee, New York, N. Y.	1923 to 1927.....	86,854.35	-----	86,854.35	57,055.32	Withheld for adjustments in connection with proposed deficiencies for 1929 and the period Jan. 1 to May 31, 1930. (Amounts of \$81,265.26, \$40,244.88, and \$6,816.47 included in credits when this case was reported in 1933, were reported on July 22, 1938, as being refunded.)
August.....	Associated Oil Co., San Francisco, Calif.	1919, 1921.....	106,096.49	-----	106,096.49	102,253.45	Withheld in connection with proposed deficiencies for 1923, 1924, 1928, and 1930.
1935 November....	Lackawanna Steel Co. and subsidiaries, Lackawanna, N. Y.	1918.....	360,227.43	-----	360,227.43	400,799.89	Withheld for adjustment in connection with appealed deficiencies for the years 1929 and 1930.
	Total.....	-----	1,014,989.33	14,373.52	1,029,362.85	1,086,462.36	

NOTE.—Information previously reported on above cases not repeated herein.

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SECTION II  
GENERAL SURVEYS

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**PART I. GENERAL SURVEY OF REFUNDS AND CREDITS—CALENDAR  
YEAR 1936**

In making a general survey of all refunds and credits submitted to the joint committee by the Commissioner of Internal Revenue during the calendar year 1936, it is first necessary to present the statistics covering these cases. Accordingly, the following is presented:

*Recapitulation of refund and credit allowances for the calendar year 1936*

Original and additional assessments.....	\$15, 710, 611. 31
Less correct tax liability.....	13, 508, 326. 77
<hr/>	
Gross overassessments.....	2, 202, 284. 54
Previously allowed.....	18, 482. 22
<hr/>	
Net overassessments for cases reported and allowed during the calendar year 1936.....	2, 183, 802. 32
<hr/>	
Composed of—	
Refunds.....	\$470, 763. 86
Credits.....	1, 713, 038. 46
<hr/>	
	2, 183, 802. 32
Interest on refunds and credits reported and allowed during the calendar year 1936.....	698, 274. 96
<hr/>	
Total of refunds, credits, and interest allowed.....	2, 882, 077. 28
Add overassessments previously reported as withheld, allowed during 1936.....	2, 315, 330. 44
<hr/>	
Composed of—	
Refunds.....	\$130, 752. 75
Credits.....	2, 184, 577. 69
<hr/>	
Interest on refunds and credits previously reported as withheld, allowed during 1936.....	932, 910. 86
<hr/>	
Grand total of refunds, credits, and interest allowed....	6, 130, 318. 58

During the calendar year 1936, 12 overassessment cases were reported to the joint committee. Settlement, however, was made in 8 of these cases, since 4 cases were withheld for settlement in connection with proposed deficiencies for other years. The above compilation, therefore, is representative of only 8 cases.

The refunds paid on cases reported to the committee during the calendar year 1936 totaled \$470,763.86. The credits allowed on these cases amounted to \$1,713,038.46. No part of the allowances made in connection with the same cases was abated. The total refunds and credits allowed on cases reported during the period January 1 to December 31, 1936, amount to the sum of the above two items, or \$2,183,802.32. On these refunds and credits, the sum of \$698,274.96 was allowed in interest, making the total allowances for the cases reported, \$2,882,077.28.

In order to obtain the grand total of all refunds, credits, and interest allowed for the calendar year 1936, it is necessary to add to the total reported and allowed refunds of \$130,752.75, credits of \$2,184,577.69,

and interest of \$932,910.86 on cases previously reported in other years as withheld which were allowed during this year. The grand total of refunds, credits and interest allowed during 1936, therefore, amounts to \$6,130,318.58.

The interest allowances on refunds and credits made in 1936 totaled \$1,631,185.82. Of this amount, \$698,274.96 is attributed to interest paid on the eight cases reported and allowed during that year, and \$932,910.86 to interest on refunds and credits previously reported as withheld, allowed during 1936. Only \$685,704.78 of this amount, however, represented cash actually returned to the various taxpayers, since \$945,481.04 was credited, or offset, against taxes due in other years. In regard to the total interest allowance of \$698,274.96 on cases reported and allowed during 1936, \$114,150.74 was credited and \$584,124.22 was refunded. The average percentage of interest allowed on refunds and credits during the period covered by this report was approximately 32 percent. The corresponding interest allowances for adjustments made in 1934 and 1935 were 33 percent and 29 percent, respectively.

Analysis of all overassessments reported to the committee during the period covered by this report discloses that no allowances were made on account of taxes for the excess-profits tax years up to and including 1921. Adjustments relating to excess-profits tax years have in the past represented from 35 to 88 percent of the allowances made. Although all of these old cases have not yet been settled, the great majority have been disposed of. The conclusion is therefore reached that this report and the reports of overassessment allowances for the future will reflect a more current view of the refund situation.

A comparison of the 1936 overassessment allowances with those of previous years is shown in the following table:

	Refunds	Credits	Total
21-month period ended Dec. 31, 1928.....	\$109, 035, 234	\$36, 824, 797	\$145, 860, 647
Calendar year—			
1929.....	38, 203, 522	15, 969, 125	54, 172, 637
1930.....	27, 174, 872	27, 677, 259	54, 852, 131
1931.....	15, 773, 240	9, 962, 580	25, 735, 820
1932.....	12, 412, 885	10, 500, 287	22, 913, 172
1933.....	7, 315, 708	8, 695, 973	16, 011, 681
1934.....	4, 759, 407	4, 194, 599	8, 954, 006
1935.....	2, 314, 495	11, 083, 172	13, 397, 667
1936.....	601, 517	3, 897, 616	4, 499, 133

It will be seen from the foregoing table of overassessments allowed, including those reported but withheld in other years and which were allowed during the calendar year 1936, that there has been a marked decrease in allowances made in comparison with those shown in former committee reports. In fact, both the refund and credit allowances for 1936 were less than for any year in which overassessments have been reported to the committee to date. Likewise, it may be stated, the number of cases reported was less than in any previous period. A summary comparison also indicates that approximately 86 percent of the tax originally and additionally assessed was ultimately collected.

An analysis of each case has been made to determine the principal causes of the overassessment allowances. From this analysis a classification of the specific causes of overassessment allowances has been prepared which will next be presented:

*Classification of overassessments*

Principal cause	Amount	Percent of total
Depreciation.....	\$924,262.49	42.32
Ordinary and necessary business expenses.....	420,394.88	19.25
Excess collections.....	367,600.99	16.83
Amortization of bond discount.....	317,678.52	14.55
Income taxable to husband instead of wife.....	142,493.14	6.52
Loss on sale of worthless assets.....	4,347.38	.20
Dividends received from domestic corporations.....	1,437.66	.07
Miscellaneous.....	5,587.26	.26
Total overassessments.....	2,183,802.32	100.00

It will be observed from this classification that the most important single cause of the 1936 overassessments is due to the determination of depreciation allowances. The amount of \$924,262.49, or approximately 42 percent of all overassessments is attributable thereto. This results from the fact that the years involved represented years in which taxpayers filed returns prior to the promulgation of Treasury Decision 4422 (February 28, 1934). It was, therefore, necessary to make adjustments giving effect to both the base and rate of depreciation. Obviously, experience in the application of this regulation tends to further acquaint taxpayers with the requirements thereof. It will, however, require several years of additional administration to assure proper application at the time of filing returns. Until this period has elapsed, there is no doubt that substantial refunds on account of these adjustments will be required.

The second major cause of this year's overassessments results from additional allowances for ordinary and necessary business expenses. These adjustments constitute approximately 19 percent of the overassessments reported. Examination of the files, in the cases in which the allowances were made, discloses that field investigations were had to determine the propriety of the claims. It was found that the expenses were disallowed in computing taxable income of prior years, but are proper deductions for the years here involved. The statutory authority for these allowances will be found in section 234 (a) (1), Revenue Act of 1926, and section 23 (a), Revenue Act of 1928, and the regulations promulgated thereunder.

Third in importance are the allowances for excess collections which account for 16.83 percent of the total overassessments reported. These collections were occasioned by payments in advance in order to avoid the running of interest on deficiencies which taxpayers anticipated would be assessed. After assessment of the exact amount of deficiencies the excess payments over the amount actually due would necessarily be returned to the various taxpayers who made them.

Of the total overassessments, \$317,678.52, or about 15 percent, is due to the amortization of bond discount as a consequence of rulings and decisions rendered subsequent to previous determinations which resulted in assessment of deficiencies. In the cases involving this adjustment it appears that amortization of expense on bonds issued prior to March 1, 1913, was disallowed. The deduction was disallowed because at that time such unamortized discount, expense, and premium applicable to bonds retired through the proceeds of a sale of new issue of bonds were considered as representing an expense in connection with the new issue to be amortized, together with the dis-

count and expense attributable to the new issue over the life of the new bonds.

The Supreme Court subsequently held in the case of *Helvering v. Union Pacific Railroad Company* (293 U. S. 282—decided December 3, 1934), that where prior to 1913, a corporation on the accrual basis sold at a discount bonds maturing at dates subsequent to 1923, the amount of discount and commissions paid or allowed for marketing the bonds may be amortized over the period of the life of the bonds and allowed as annual deductions from gross income. Accordingly, on November 9, 1935, Treasury Decision 4603 (I. R. B. XIV-46, p. 3), was approved setting forth the treatment for income-tax purposes of the unamortized discount on bonds retired and premiums paid upon retirement. It is held therein that—

in the case of a retirement of an issue of old bonds from the proceeds of the sale of new bonds any amount paid in excess of the face value of the old bonds, less any amount of premium received when issued and not already returned as income, and any unamortized discount and unamortized expense attributable to such bonds, is deductible in the year of their retirement.

In view of this Treasury Decision the deductions which were previously disallowed were allowed during 1936 to the extent indicated above.

The preceding discussion of the principal causes of overassessments covers about 93 percent of the total overassessments. The remaining 7 percent embrace overassessment allowances of less importance from the standpoint of contributing cause.

Examination of all overassessments reported to the committee during the calendar year 1936 revealed that the allowances were in accordance with the applicable provisions of the statutes. Therefore, no unfavorable criticism was offered to any case reviewed in that period.

Although this is a report of overassessments in excess of \$75,000, involving only income, war-profits, excess-profits, estate, or gift taxes refunded or credited during 1936, it may be of interest to state the total of all income-tax collections and allowances for this particular year. Such collections amounted to \$1,551,652,595.80, whereas cash refunds of this class of tax amounted to \$20,987,800.02, or approximately 1.3 percent of the income-tax collections.

An analysis of overassessments allowed in 1936 in excess of \$20,000 has been prepared by the Treasury Department and is included herein as appendix A.

Furthermore, for the purpose of showing the proportion that refunds, credits, and interest allowed on cases reported to the committee during the calendar and fiscal years 1936 bears to those of \$20,000 to \$75,000, and to all refunds, credits, and interest of this class, there have been prepared by the staff several comparative tables. These are included as appendixes B, C, D, and E.

## APPENDIXES TO PART I

## APPENDIX A

TREASURY DEPARTMENT,  
Washington, October 3, 1938.

MR. COLIN F. STAM:

Chief of Staff, Joint Committee on  
Internal Revenue Taxation, Washington, D. C.

DEAR MR. STAM: I am submitting herewith an analysis of the over-assessments in excess of \$20,000 reviewed in this office for the year 1936. This analysis is submitted to you pursuant to an oral request from your office.

The attached analysis of overassessments is similar to that submitted for the prior year.

Very truly yours,

J. P. WENCHEL,  
Chief Counsel, Bureau of Internal Revenue.

## INCOME-TAX CASES—REPORT FOR YEAR ENDED DECEMBER 31, 1936

The number of income-tax cases involving overassessments and made the subject of the present analysis is 128. From an examination of these cases it is found that the original taxes assessed amounted to \$33,227,092.24, additional taxes and interest assessed amounted to \$20,314,653.24, the overassessments previously allowed amounted to \$913,998.88, and the total overassessments herein analyzed amounted to \$24,226,062.93. The overassessments made the subject of this analysis involving the profits tax years 1917 to 1921, inclusive, aggregate \$2,453,798.49, of which \$135,568.08 represents refund, \$832,671.92 represents credits to other years, and \$1,485,558.49 represents unpaid taxes abated. The sum of \$2,453,798.49 is 10.13 percent of the overassessments covered by this analysis, which is a decrease from that shown in the report for the year 1935, which disclosed 26.96 percent.

The following is a summary of the result obtained by this analysis with respect to income, war-profits, and excess-profits taxes:

*Analysis of overassessments of income-tax cases—report for year ended Dec. 31, 1936*

Classification	Refund	Credit	Abatement	Total	Percent
Court decisions	\$2,797.63	\$14,779.99	\$3,894,865.76	\$3,912,443.38	16.15
Department of Justice settlements	440,155.78	7,511.64	172,124.72	619,792.14	2.55
Duplicate and erroneous assessments			7,512,630.58	7,512,630.58	31.01
Depreciation	518,490.74	144,579.23	29,105.27	692,175.24	2.86
Depletion	14,837.94	100,723.88	15,682.11	131,243.93	.54
Amortization	39,391.83	310,236.29		349,628.12	1.44
Inventory changes	31,794.83		59,731.77	91,526.60	.38
Shift of income	230,266.53	217,028.71	95,625.12	542,920.36	2.24
Invested capital changes		454,441.08		454,441.08	1.88
Losses and bad debts	124,957.71	58,362.76	183,949.26	367,269.73	1.52
Foreign taxes	2,998.87	1,272,989.16		1,275,988.03	5.27
Adjustment of gross income	121,731.24	102,341.28	2,162,545.55	2,386,618.07	9.85
Interest on deficiencies	43,062.39	97,377.54	2,243,607.85	2,384,047.78	9.84
Taxes	89.01	20,520.27	13,861.64	34,470.92	1.45
Proceeds from sales of stocks	69,763.22	24,792.22	256,515.85	351,071.29	1.45
Net losses	44,123.63		71,190.20	115,313.83	.48
Penalties		1,539.54	522,173.61	523,713.15	2.16
Miscellaneous <sup>1</sup>	477,528.71	556,158.14	1,447,081.85	2,480,768.70	10.24
Total	2,161,990.06	3,383,381.73	18,680,691.14	24,226,062.93	100.00

<sup>1</sup> This item represents adjustments for repairs, compensation of officers and employees, interest, donations, legal expenses, advertising expenses, rents, exempt organizations, mathematical errors, ordinary and necessary business expenses, changes in accounting periods, taxes withheld, etc.

## ESTATE-TAX CASES—REPORT FOR YEAR ENDED DECEMBER 31, 1936

The cases which are covered by this analysis number three for the year 1936. The total original taxes assessed amounted to \$1,131,604.47. The total additional taxes assessed amounted to \$90,932.46. The total overassessments for the year 1936 amounted to \$129,265.85, of which \$49,304.97 were refunded and \$79,960.88 were abated.

*Analysis of estate-tax overassessments*

Classification	Refund	Abatement	Total	Percent
Credit for State inheritance taxes.....	\$3, 448. 83	\$33, 604. 11	\$37, 052. 94	28. 66
Interest adjustments.....	3, 768. 98	13, 308. 71	17, 077. 69	13. 22
Attorneys' fees, executors' commissions, miscellaneous administration expenses, and claims against the estate.....	39, 405. 02	6, 914. 22	46, 319. 24	35. 83
Bequests to charitable organizations.....	2, 682. 14	26, 133. 84	28, 815. 98	22. 29
Total.....	49, 304. 97	79, 960. 88	129, 265. 85	100. 00

## APPENDIX B

*Comparison of overassessments of \$20,000 to \$75,000, including interest, with overassessments under sec. 710 of the Revenue Act of 1928, including interest, of income, war-profits, excess-profits, estate, and gift taxes—calendar year 1936*

	\$20,000 to \$75,000	Over \$75,000	Total
Original assessment.....	\$20, 237, 858. 43	\$12, 989, 233. 81	\$33, 227, 092. 24
Additional assessment and interest.....	17, 593, 275. 74	2, 721, 377. 50	20, 314, 653. 24
Total assessment and interest.....	37, 831, 134. 17	15, 710, 611. 31	53, 541, 745. 48
Deduct:			
Overassessments previously allowed.....	895, 516. 66	18, 482. 22	913, 998. 88
Overassessments allowed during the year.....	22, 042, 260. 61	2, 183, 802. 32	24, 226, 062. 93
Total overassessments.....	22, 937, 777. 27	2, 202, 284. 54	25, 140, 061. 81
Total assessments retained.....	14, 893, 356. 90	13, 508, 326. 77	28, 401, 683. 67
Percent of total overassessments to total assessments and interest.....	60. 68	13. 90	46. 95
Percent of overassessments allowed during the year to total assessments and interest.....	58. 26	13. 90	45. 25

## APPENDIX C

*Comparison of refunds and interest under sec. 710 of the Revenue Act of 1928 with all refunds and interest of income, war-profits, excess-profits, estate, and gift taxes—Fiscal years ended June 30*

	1934	1935	1936
Total refunds to taxpayers.....	\$32, 047, 670. 05	\$17, 030, 209. 73	\$17, 876, 265. 58
Interest paid on refunds to taxpayers.....	12, 149, 433. 53	5, 735, 585. 52	6, 453, 400. 01
Total refunds and interest to taxpayers.....	44, 197, 103. 58	22, 765, 795. 25	24, 329, 665. 59
Total refunds under sec. 710, Revenue Act of 1928.....	7, 555, 588. 94	2, 231, 606. 93	1, 427, 377. 04
Interest paid on refunds under sec. 710, Revenue Act of 1928.....	4, 897, 129. 08	1, 651, 271. 03	550, 610. 84
Total refunds and interest under sec. 710, Revenue Act of 1928.....	12, 452, 718. 02	3, 882, 877. 96	1, 977, 987. 88
Percent of refunds and interest under sec. 710 to total refunds and interest.....	28. 17	17. 05	8. 12

APPENDIX D

*Comparison of credits and interest under sec. 710 of the Revenue Act of 1928 with all credits and interest of income, war-profits, excess-profits, estate, and gift taxes—Fiscal years ended June 30*

	1934	1935	1936
Total credits and interest to taxpayers.....	\$19,123,080.94	\$27,226,775.32	\$10,777,096.33
Total credits and interest to taxpayers under sec. 710, Revenue Act of 1928.....	8,555,511.16	15,044,798.42	2,406,958.87
Percent of credits and interest under sec. 710, Revenue Act of 1928, to total credits and interest.....	44.73	55.25	22.33

APPENDIX E

*Comparison of refunds and credits, including interest, under sec. 710 of the Revenue Act of 1928, with all refunds and credits, including interest, of income, war-profits, excess-profits, estate, and gift taxes—Fiscal years ended June 30*

	1934	1935	1936
Total refunds and credits with interest to taxpayers....	\$63,320,184.52	\$49,992,570.57	\$35,106,761.92
Refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928.....	21,008,229.18	18,927,676.38	4,384,946.75
Percent of refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928, to total refunds and credits with interest to taxpayers.....	33.17	37.86	12.49

SUPPLEMENT TO PART I

*Statement of refunds, credits, and interest allowed in cases involving \$75,000 and over for years prior to the enactment of sec. 710, Revenue Act of 1928, and years subsequent thereto*

FULL-YEAR PERIODS PRIOR TO SEC. 710, REVENUE ACT OF 1928

Year	Refunds	Credits	Overpayments	Interest
1924.....	\$24,095,112	\$22,457,462	\$46,552,574	\$2,369,889
1925.....	30,410,142	24,346,004	54,756,146	11,465,940
1926.....	42,277,239	51,892,424	94,169,663	15,454,142

FULL-YEAR PERIODS SUBSEQUENT TO SEC. 710, REVENUE ACT OF 1928

1929.....	\$38,203,522	\$15,969,125	\$54,172,647	\$12,886,966
1930.....	27,174,872	27,677,259	54,852,131	21,187,620
1931.....	15,773,240	9,962,580	25,735,820	8,608,528
1932.....	12,412,885	10,500,287	22,913,172	6,676,608
1933.....	7,315,708	8,695,973	16,011,681	6,957,671
1934.....	4,759,407	4,194,599	8,954,006	4,426,175
1935.....	2,314,495	11,083,172	13,397,667	4,431,682
1936.....	601,517	3,897,616	4,499,133	1,631,186
1937.....	1,683,027	2,026,789	3,709,816	1,538,831
1938.....	3,059,205	4,156,014	7,215,219	2,471,018

PART II. GENERAL SURVEY OF REFUNDS AND CREDITS, CALENDAR  
YEAR 1937

The statistics in regard to refunds and credits submitted to the joint committee by the Commissioner of Internal Revenue during the calendar year 1937, appear as follows:

*Recapitulation of refund and credit allowances for the calendar year 1937*

Original and additional assessments.....		\$6, 060, 331. 07
Less correct tax liability.....		3, 793, 724. 28
		<hr/>
Gross overassessments.....		2, 266, 606. 79
Previously allowed.....		2, 478. 94
		<hr/>
Net overassessments for cases reported and allowed during the calendar year 1937.....		2, 264, 127. 85
		<hr/>
Composed of—		
Refunds.....	\$1, 394, 962. 95	
Credits.....	869, 164. 90	
		<hr/>
		2, 264, 127. 85
Interest on refunds and credits reported and allowed during the calendar year 1937.....		644, 078. 32
		<hr/>
Total of refunds, credits, and interest allowed.....		2, 908, 206. 17
Add overassessments previously reported as withheld, allowed during 1937.....		1, 445, 687. 66
Composed of—		
Refunds.....	\$288, 063. 12	
Credits.....	1, 157, 624. 54	
		<hr/>
Interest on refunds and credits previously reported as with- held, allowed during 1937.....		894, 753. 10
		<hr/>
Grand total of refunds, credits, and interest allowed.....		5, 248, 646. 93

During the calendar year 1937, 22 overassessment cases were reported to the joint committee. One of these cases, however, involving processing taxes was returned to the Bureau for the reason that it was not within the jurisdiction of the committee to consider it. Therefore, only 21 cases were reviewed during this period. The figures shown above are representative of only 19 cases, since the allowance in 1 case was withheld in connection with proposed deficiencies for other years, and another case was withdrawn as the result of criticism raised by the staff of the committee.

The refunds paid on cases reported to the committee during the calendar year 1937 totaled \$1,394,962.95. The credits allowed on these cases amounted to \$869,164.90. No part of the allowances made in connection with the same cases was abated. The total refunds and credits allowed on cases reported during the period January 1 to December 31, 1937, amount to the sum of the above two items, or \$2,264,127.85. On these refunds and credits, the sum of \$644,078.32 was allowed in interest, making the total allowances for the cases reported \$2,908,206.17.

In order to obtain the grand total of all refunds, credits and interest allowed for the calendar year 1937, it is necessary to add to the total reported and allowed refunds of \$288,063.12 credits of \$1,157,624.54 and interest of \$894,753.10 on cases previously reported in other years as withheld which were allowed during this year. The grand total of refunds, credits, and interest allowed during 1937, therefore, amounts to \$5,248,646.93.

The interest allowances on refunds and credits made in 1937 totaled \$1,538,831.42. Of this amount, \$644,078.32 is attributed to interest paid on the 19 cases reported and allowed during that year, and \$894,753.10 to interest on refunds and credits previously reported as withheld, allowed during 1937. Only \$493,985.92 of this amount, however, represented cash actually returned to the various taxpayers, since \$1,044,845.50 was credited, or offset, against taxes due in other years. In regard to the total interest allowance of \$644,078.32 on cases reported and allowed during 1937, \$372,666.99 was credited and \$271,411.33 was refunded. The average percentage of interest allowed on refunds and credits during the period covered by this report was approximately 28 percent, or 4 percent less than in 1936.

Analysis of all overassessments reported to the committee during the calendar year 1937 shows that allowances of \$329,520.88, or 15 percent, were made on account of taxes for the excess-profits tax years up to and including 1921, and the remaining 85 percent of the allowances were for years subsequent to 1921. Further analysis discloses that the interest paid on the overassessments prior to 1922 totaled \$182,277.16; that is, the interest charges attributable to the excess-profits tax years represent 28 percent of the interest paid on all overassessments submitted to the committee during the year 1937.

In connection with the refund and credit allowances, it may be of interest to note their trend since 1928, the year in which section 710 was promulgated, requiring that all refunds and credits in excess of \$75,000 be referred to the joint committee. The percentage of increase and decrease in allowances made from year to year is clearly indicated in the following summary:

Year	Refund and credit allowances	Percent increase	Percent decrease
1928 (7-month period).....	\$84,096,586		
1929.....	54,172,647		35.58
1930.....	54,852,131	12.38	
1931.....	25,735,820		53.08
1932.....	22,913,172		10.97
1933.....	16,011,681		30.12
1934.....	8,954,006		44.08
1935.....	13,397,667	33.17	
1936.....	4,499,133		66.42
1937.....	3,709,816		17.54

The extent of the diminution in refunds and credits is further emphasized by a comparison of the 1937 allowances with each of the previous years. This comparison, in the order of the years shown above, reveals a decrease of 95, 93, 93, 85, 83, 76, 58, 72, and 17 percent, respectively. Still another aspect of this year's overassessment cases is that approximately 63 percent of the tax originally and additionally assessed was ultimately collected.

Attention is particularly directed to the fact that the refunds paid on cases reported to the committee during the calendar year 1937 totaled \$1,394,962.95, whereas in 1936 they amounted to only \$470,763.86. An increase in refund allowances for 1937 is therefore reflected to the extent of 66 percent over those of 1936. The refunds in 1936, however, were abnormally low as compared to those in all previous years, and a better perspective is obtained by comparing years prior to 1936 with the instant year. On this basis, a decrease in refunds ranging from 31 to 99 percent is disclosed.

It is to be noted that the low level of overassessment allowances reached in 1936 has been maintained for this year. In both 1936 and 1937 the total refunds and credits allowed on cases reported to the committee were slightly over \$2,000,000. It is believed that allowances for these large cases have reached a minimum, particularly in view of the relatively high level of tax rates now in effect.

An analysis of the cases reported to the committee in the period covered by this report sets forth the principal causes of the 1937 over-assessments, as follows:

*Classification of overassessments*

Principal cause	Amount	Percent of total
Determination of capital net gains and losses .....	\$458,654.64	20.26
Estate tax .....	330,207.17	14.58
Depreciation .....	322,717.39	14.25
Loss on sale of assets .....	281,032.84	12.40
Dividends of domestic corporations .....	213,549.46	9.43
Affiliation .....	146,167.29	6.46
Ordinary and necessary business expenses .....	103,389.84	4.57
Statutory reorganization .....	98,967.25	4.37
Excess collections .....	97,562.11	4.31
Bad debts .....	93,253.44	4.12
Foreign taxes .....	76,535.10	3.38
Remission of interest assessed on deficiencies .....	24,861.43	1.10
Amortization of bond discount .....	9,403.86	.42
Inventory adjustments .....	1,195.35	.05
Depletion .....	425.93	.02
Miscellaneous .....	6,204.75	.28
Total overassessments .....	2,264,127.85	100.00

Reference to the foregoing classification discloses that the capital net gains and loss provisions were responsible for the largest amount of overassessment allowances in 1937. It appears that \$458,654.64, or 20.26 percent, is attributable thereto. The allowances were made in four cases: namely, Commercial Trust Co. of New Jersey, trustee under Morris Guggenheim Trust for Lucile G. Bonar; Mrs. Florence M. Quinn; William Randolph Hearst; and John Sherman Hoyt. Evidence of the complications encountered in connection therewith is disclosed by the questions presented in the above-mentioned cases. Among these were (1) whether any part of profit from the sale of stock acquired through the exercise of stock rights is taxable as capital net gain where the stock is sold less than 2 years after the rights were exercised, but more than 2 years after the date of acquisition of the stock on which the rights were issued; (2) determination of a distribution in liquidation as distinguished from a dividend; and (3) not only what constitutes a taxable exchange, but the proper basis for determining the profit or loss thereon. Statutory authority upon which the allowances were predicated will be found in sections 101, 112 (a), and 113 (a) (5) of the Revenue Act of 1928.

Second in amount of allowances is the estate tax, which accounts for 14.58 percent of the total overassessments reported. Refunds necessitated by this cause totaled \$330,207.17. Of this amount, however, \$146,212.17 represents advance payments which were made by executors upon filing of returns and not to decreases in net estates as reported. The balance of \$183,995 represents the overassessment of estate taxes resulting from allowances of additional deductions on account of previously taxed properties included in gross estates. It

was determined that such properties were received by bequest from persons who died within 5 years prior to the death of the decedents, and were subjected to tax as part of the gross estates of the prior decedents. The allowances have been made pursuant to section 302 (a) (2) of the Revenue Acts of 1924 and 1926; amended by section 806, Revenue Act of 1932, and 402, Revenue Act of 1934.

The third major cause of this year's overassessments results from increased deductions for depreciation. These adjustments constitute approximately 14 percent of the overassessments reported. Since the discussion and conclusions concerning depreciation allowance, which are contained in the general survey of the 1936 refunds and credits, section II, part I, of this volume are equally applicable to 1937 overassessments, it is not believed necessary to repeat them.

Losses on assets sold ranks fourth in overassessment allowances, representing \$281,032.84, or 12.40 percent. In most of the cases in which these allowances occur, it was found that the taxpayers had failed to take on their returns deductions to which they were entitled for losses sustained. Therefore, upon the filing of timely claims the omitted deductions were allowed.

The elimination of certain amounts included in gross income as dividends received from domestic corporations resulted in overassessment allowances of \$213,549.46. It was determined that such amounts did not constitute taxable income as provided in sections 201 (c) and (h) and 213 (a), Revenue Act of 1926, and section 115 (c) and (h), Revenue Act of 1928, and the regulations promulgated thereunder.

The preceding detailed discussion of principal causes of overassessments covers the first five classifications and represents about 71 percent of the total overassessments allowed. The remaining 29 percent embrace overassessment allowances of a more diversified character and of less importance from the standpoint of contributing cause.

Of the 21 cases duly reported to the joint committee in 1937, no adverse criticism could be made on the basis of the summary of the facts and decisions of the Commissioner in 18 cases. Serious controversy arose in the remaining 3 cases which were disposed of as follows:

One case (Commercial Trust Co. of New Jersey, trustee under Morris Guggenheim Trust for Lucile G. Bonar), involving \$99,336.59, was finally allowed as originally proposed due partially to subsequent developments in its administrative handling. Decision to make this refund was reached because of the unqualified acceptance of the taxpayer's offer by the Attorney General prior to reference of the case to the committee.

Another case (Ferrocarri del Pacifico de Nicaragua), involving \$372,879.06, was ultimately withdrawn as a result of criticism emanating from the staff and concurred in by the members of the joint committee at a meeting called for the express purpose of considering it.

The third case (Group No. 1 Oil Corporation), involving originally \$438,300.88, was reduced to \$20,014.26 as the result of the staff's criticism to the portion of the refund in excess of that amount. The savings effected to the Government in this case alone was \$411,017.61, the amount of \$7,269.01 being paid as interest on the \$20,014.26 allowance.

Although this report is confined to overassessments in excess of \$75,000 reported to the joint committee during 1937, it may be of interest to note the total of all income-tax collections and refunds during this period. Such collections amounted to \$2,584,977,631.15, whereas refunds of this class of tax amounted to \$24,579,115.15, or less than 1 percent of the income-tax collections. A comparison of these two items with those of 1936 discloses an increase in collections of 39.97 percent and an increase in refunds of 14.61 percent.

The appendixes which immediately follow contain information on overassessments and interest for the calendar and fiscal years 1937 and are of like character as those shown in part I of this section for the calendar and fiscal years 1936.

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## APPENDIXES TO PART II

### APPENDIX A

TREASURY DEPARTMENT,  
*Washington, October 3, 1938.*

MR. COLIN F. STAM,  
*Chief of Staff, Joint Committee on Internal Revenue Taxation,  
Washington, D. C.*

DEAR MR. STAM: I am submitting herewith an analysis of the overassessments in excess of \$20,000 reviewed in this office for the year 1937. This analysis is submitted to you pursuant to an oral request from your office.

The attached analysis of overassessments is similar to that submitted for the prior year.

Very truly yours,

J. P. WENCHEL,  
*Chief Counsel, Bureau of Internal Revenue.*

#### INCOME-TAX CASES—REPORT FOR YEAR ENDED DECEMBER 31, 1937

The number of income-tax cases involving overassessments and made the subject of the present analysis is 155. From an examination of these cases it is found that the original taxes assessed amounted to \$45,460,122.71, additional taxes and interest assessed amounted to \$8,744,103.90, the overassessments previously allowed amounted to \$1,147,750.38, and the total overassessments herein analyzed amounted to \$11,885,629.12. The overassessments made the subject of this analysis involving the profits tax years 1917 to 1921, inclusive, aggregate \$1,613,869.49, of which \$219,326.32 represents refund, \$1,326,802.99 represents credit to other years, and \$67,740.18 represents unpaid taxes abated. The sum of \$1,613,869.49 is 13.58 percent of the overassessments covered by this analysis, which is an increase from that shown in the report for the year 1936, which disclosed 10.13 percent.

The following is a summary of the result obtained by this analysis with respect to income, war-profits, and excess-profits taxes:

*Analysis of overassessments of income-tax cases—Report for the year ended Dec. 31, 1937*

Classification	Refund	Credit	Abatement	Total	Percent
Court decisions.....	\$2,889.60	\$106,781.91		\$109,671.51	0.92
Board decisions.....	20,893.85		\$1,237,387.71	1,258,281.56	10.59
Department of Justice settlements.....	619,391.87	92,029.78	230,861.41	942,283.06	7.93
Duplicate and erroneous assessments.....			872,644.89	872,644.89	7.34
Depreciation.....	139,875.53	744,102.49	161,732.51	1,045,710.53	8.80
Depletion.....	2,612.69			2,612.69	.01
Amortization.....	5,160.53	1,031,056.40	67,547.34	1,103,764.27	9.29
Inventory changes.....	1,195.35	20,771.72		21,967.07	.18
Shift of income.....	276,341.83	376,311.40	246,673.71	899,326.94	7.57
Losses and had debts.....	550,602.13	205,087.88	151,751.87	907,441.88	7.63
Adjustment of gross income.....	735,003.94	198,528.36	743,164.60	1,676,696.90	14.11
Interest on deficiencies.....	50,211.52	19,733.00	454,263.76	524,208.28	4.41
Taxes.....	65,844.98	4,427.15	42,618.03	112,890.16	.95
Proceeds from sales of stock.....	18,332.41	121,244.39	1,072,625.27	1,212,202.07	10.20
Net losses.....	62,703.10	8,701.79		71,404.89	.60
Penalties.....	108.90	66.46	270,823.20	270,998.56	2.28
Contributions.....	32,357.83			32,357.83	.28
Installment sales.....			17,054.15	17,054.15	.14
Miscellaneous <sup>1</sup> .....	127,424.54	257,960.35	418,726.99	804,111.88	6.77
Total.....	2,710,950.60	3,186,803.08	5,987,875.44	11,885,629.12	100.00

<sup>1</sup> This item represents adjustments for repairs, compensation of officers and employees, interest, donations, legal expenses, advertising expenses, rents, exempt organizations, mathematical errors, ordinary and necessary business expenses, changes in accounting periods, taxes withheld, etc.

ESTATE-TAX CASES—REPORT FOR YEAR ENDED DECEMBER 31, 1937

The cases which are covered by this analysis number 14 for the year 1937. The total original taxes assessed amounted to \$4,136,163.69. The total additional taxes assessed amounted to \$2,016,324.72. The total overassessments for the year 1937 amounted to \$2,238,704.29, of which \$573,816.50 were refunded and \$1,664,887.79 were abated.

*Analysis of estate-tax overassessments*

Classification	Refund	Abatement	Total	Percent
Department of Justice settlements.....	\$172,642.82	\$1,608,203.85	\$1,780,846.67	79.55
Duplicate assessment.....	146,212.17	33,866.90	180,079.07	8.05
Reduction in value of securities.....	148,728.01	22,252.24	170,980.25	7.64
Attorneys' fees, executors' commissions, miscellaneous administration expenses, and claims against the estate.....	31,531.22	564.80	32,096.02	1.43
Gift-tax credit.....	21,045.27		21,045.27	.95
Credit for State inheritance taxes.....	19,193.30		19,193.30	.86
Bequests to charitable organizations.....	21,085.08		21,085.08	.92
Interest adjustments.....	13,378.63		13,378.63	.60
Total.....	573,816.50	1,664,887.79	2,238,704.29	100.00

## APPENDIX B

*Comparison of overassessments of \$20,000 to \$75,000, including interest, with overassessments under sec. 710 of the Revenue Act of 1928, including interest, of income, war-profits, excess-profits, estate, and gift taxes—Calendar year 1937*

	\$20,000 to \$75,000	Over \$75,000	Total
Original assessment.....	\$40,959,015.17	\$4,501,107.54	\$45,460,122.71
Additional assessment and interest.....	7,184,880.37	1,559,223.53	8,744,103.90
Total assessment and interest.....	48,143,895.54	6,060,331.07	54,204,226.61
Deduct:			
Overassessments previously allowed.....	1,145,271.44	2,478.94	1,147,750.38
Overassessments allowed during the year.....	9,701,826.80	2,264,127.85	11,965,954.65
Total overassessments.....	10,847,098.24	2,266,606.79	13,113,705.03
Total assessments retained.....	37,296,797.30	3,793,724.28	41,090,521.58
Percent of total overassessments to total assessments and interest.....	22.53	37.23	24.19
Percent of overassessments allowed during the year to total assessments and interest.....	20.15	37.36	22.08

## APPENDIX C

*Comparison of refunds and interest under sec. 710 of the Revenue Act of 1928 with all refunds and interest, of income, war profits, excess profits, estate, and gift taxes—fiscal years ended June 30*

	1935	1936	1937
Total refunds to taxpayers.....	\$17,030,209.73	\$17,876,265.58	\$20,359,773.50
Interest paid on refunds to taxpayers.....	3,735,585.52	6,453,400.01	4,598,171.34
Total refunds and interest to taxpayers.....	22,765,795.25	24,329,665.59	24,957,944.84
Total refunds under sec. 710, Revenue Act of 1928.....	2,231,606.93	1,427,377.04	1,031,072.71
Interest paid on refunds under sec. 710, Revenue Act of 1928.....	1,651,271.03	550,610.84	364,384.24
Total refunds and interest under sec. 710, Revenue Act of 1928.....	3,882,877.96	1,977,987.88	1,395,456.95
Percent of refunds and interest under sec. 710 to total refunds and interest.....	17.05	8.12	5.59

## APPENDIX D

*Comparison of credits and interest under sec. 710 of the Revenue Act of 1928 with all credits and interest, of income, war profits, excess profits, estate, and gift taxes—fiscal years ended June 30*

	1935	1936	1937
Total credits and interest to taxpayers.....	\$27,226,775.52	\$10,777,096.33	\$17,918,052.13
Total credits and interest to taxpayers under sec. 710, Revenue Act of 1928.....	15,044,798.42	2,406,958.87	4,320,540.55
Percent of credits and interest under sec. 710, Revenue Act of 1928, to total credits and interest.....	55.25	22.33	24.10

## APPENDIX E

*Comparison of refunds and credits, including interest, under sec. 710 of the Revenue Act of 1928 with all refunds and credits, including interest, of income, war profits, excess profits, estate, and gift taxes—fiscal years ended June 30*

	1935	1936	1937
Total refunds and credits with interest to taxpayers.....	\$49,992,570.57	\$35,106,761.92	\$42,875,996.97
Refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928.....	18,927,676.38	4,384,946.75	5,715,997.50
Percent of refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928, to total refunds and credits with interest to taxpayers.....	37.86	12.49	13.33

**PART III. GENERAL SURVEY OF REFUNDS AND CREDITS, CALENDAR  
YEAR 1938**

The statistics in regard to refunds and credits, submitted to the joint committee by the Commissioner of Internal Revenue during the calendar year 1938, appear as follows:

*Recapitulation of refund and credit allowances for the calendar year 1938*

Original and additional assessments.....	\$40, 116, 406. 02	
Less correct tax liability.....	33, 587, 049. 62	
		<hr/>
Gross overassessments.....		6, 529, 356. 40
Previously allowed.....	\$80, 276. 95	
Withheld in connection with proposed deficiencies.....	19, 421. 05	
		<hr/>
		99, 698. 00
		<hr/>
Net overassessments for cases reported and allowed during the calendar year 1938.....		6, 429, 658. 40
		<hr/>
Composed of—		
Refunds.....	\$3, 044, 831. 07	
Credits.....	3, 141, 024. 23	
Abatements.....	243, 803. 10	
		<hr/>
		6, 429, 658. 40
Interest on refunds and credits reported and allowed during the calendar year 1938.....		1, 384, 556. 26
		<hr/>
Total of refunds, credits, abatements, and interest allowed.....		7, 814, 214. 66
Add overassessments previously reported as withheld, allowed during 1938.....		1, 029, 362. 85
		<hr/>
Composed of—		
Refunds.....	\$14, 373. 52	
Credits.....	1, 014, 989. 33	
		<hr/>
Interest on refunds and credits previously reported as withheld, allowed during 1938.....		1, 086, 462. 36
		<hr/>
Grand total of refunds, credits, abatements, and interest allowed.....		9, 930, 039. 87

During the calendar year 1938, 39 overassessment cases were reported to the joint committee. Settlement, however, was made in only 34 of these cases, since 2 cases were withheld for settlement by the Bureau in connection with proposed deficiencies for other years; 1 case was withheld by the Comptroller General pending settlement of deficiencies, and 2 cases, which were criticized by the staff, were withheld pending further investigation. The above compilation, therefore, is representative of only 34 cases.

The refunds paid on cases reported to the committee during the calendar year 1938 totaled \$3,044,831.07, the credits allowed amounted to \$3,141,024.23, and the abatements in connection with the same cases amounted to \$243,803.10. The total refunds, credits, and abatements allowed on cases reported during the period January 1 to December 31, 1938, amount to the sum of the above three items, or \$6,429,658.40. On the refunds and credits, the sum of \$1,384,556.26 was allowed in interest, making the total allowances for the cases reported, \$7,814,214.66.

In order to obtain the grand total of all refunds, credits, abatements, and interest allowed for the calendar year 1938, it is necessary to add to the total reported and allowed, refunds of \$14,373.52, credits of

\$1,014,989.33, and interest of \$1,086,462.36 on cases previously reported in other years as withheld which were allowed during this year. The grand total of refunds, credits, abatements, and interest allowed during 1938, therefore, amounts to \$9,930,039.87.

Included in the grand total of overassessments and interest, it should be noted, are abatements which occur where the refund or credit is in excess of \$75,000. Abatements are in reality adjusting bookkeeping entries and do not directly affect the revenue, since, in general, they merely represent the write-off of an improper charge against the taxpayer entered on the collector's books. The best indication of the overassessment situation for 1938, therefore, is to be obtained by comparison of the refund and credit allowances with those of prior years.

The refunds to taxpayers as a result of overassessments and overpayments of income, estate, and gift taxes in 1938 are less than those made for each of the years 1927 to 1934, inclusive, but have increased over those for 1935, 1936, and 1937 to the extent of 24, 80, and 51 percent, respectively. Considered from the standpoint of proportion to total overassessments, however, the ratio in 1938 is about the same as that of 1937.

Likewise, credit allowances in 1938 are less than those made for each of the years from 1927 to 1935, inclusive, but have increased over those for 1936 and 1937 to the extent of 6 and 47 percent, respectively. The credits represented 86 percent of the overassessments in 1936, as compared to 59 and 57 percent, in 1937 and 1938, respectively.

Notwithstanding the fact that both the refunds and credits increased in 1938, these allowances constitute a reduction of the tax originally and additionally assessed of only 16.03 percent. Therefore, 83.97 percent of the tax assessed and collected in these cases were retained by the Government.

The increase of the refunds and credits for 1938 may be ascribed to the irregular flow of cases through the Bureau. This was caused in some instances by deferring allowances pending final decisions of courts, which were believed would settle controversial issues before the Bureau, or else clarify them to an extent that proper determinations could be made. Then, too, in view of the many technical ramifications involved in the effective administration of our tax laws, it is obvious that some variations in the number of cases and amount of allowances per year will necessarily result.

The interest allowances on refunds and credits made in 1938 totaled \$2,471,018.62. Of this amount, \$1,384,556.26 is attributed to interest paid on the 34 cases reported and allowed during that year, and \$1,086,462.36 to interest on refunds and credits previously reported as withheld, allowed during 1938. Only \$962,650 of this amount, however, represented cash actually returned to the various taxpayers, since \$1,508,368.62 was credited, or offset, against taxes due in other years. In regard to the total interest allowance of \$1,384,556.26 on cases reported and allowed during 1938, \$562,212.89 was credited and \$822,343.37 was refunded. The average percentage of interest allowed on refunds and credits reported in 1938, was approximately 22 percent. This is the lowest since 1929, at which time the average percentage of interest allowed was 20.53 percent.

Analysis of all overassessment allowances during the period covered by this report shows that \$1,182,855.43, or 16 percent, was made on

account of taxes for the excess-profits tax years up to and including 1921, and the remaining 84 percent of the allowances were for years subsequent thereto. Of the above-mentioned amount, however, only \$275,907.20 is attributable to cases reported during 1938, the remainder being for cases previously reported and withheld which were allowed in that year. Further analysis discloses that the interest paid on the total allowances for the excess-profits tax years was equivalent to 91 percent of the principal amount, or \$1,077,194.50.

A complete classification of the specific causes of overassessment allowances is next presented. This grouping of the overassessments in re principal cause, is essential in showing what provisions of the law have been responsible for the large allowances made during the calendar year 1938.

*Classification of overassessments*

Principal cause	Amount	Percent of total
Ordinary and necessary business expenses .....	\$1, 221, 627. 67	18. 99
Depreciation .....	1, 188, 088. 34	18. 47
Deficiencies in tax summarily assessed .....	719, 920. 22	11. 19
Estate tax .....	524, 805. 66	8. 16
Capital gains and losses .....	454, 216. 13	7. 06
Remission of interest assessed on deficiencies .....	437, 856. 89	6. 81
Income of another taxpayer .....	423, 385. 77	6. 58
Excess of tax withheld at source over actual liability .....	273, 375. 00	4. 25
Bad debts .....	154, 207. 49	2. 40
Excess of tax assessed on basis of tentative return .....	140, 000. 00	2. 18
Retirement indebtedness .....	134, 177. 86	2. 09
Dividends from domestic corporations .....	112, 518. 90	1. 75
Gift tax .....	110, 471. 81	1. 72
Foreign tax credit .....	85, 077. 24	1. 32
Income distributed to legatees .....	78, 887. 33	1. 23
Cost of goods sold understated .....	74, 884. 09	1. 16
Unamortized bond discount and premium paid on bonds retired .....	73, 067. 09	1. 14
Amortization of cost of war facilities .....	69, 281. 80	1. 08
Miscellaneous .....	155, 864. 67	2. 42
<b>Total</b> .....	<b>6, 432, 013. 96</b>	<b>-----</b>
Withheld in connection with deficiencies .....	2, 355. 56	-----
<b>Net overassessments allowed for cases reported during the calendar year 1938</b> .....	<b>6, 429, 658. 40</b>	<b>-----</b>

It appears from the above classification of the overassessments that adjustments for ordinary and necessary business expenses are responsible for the largest amount of allowances made. The sum of \$1,221,627.67, or 18.99 percent, is attributable thereto. The provisions of the taxing statutes covering deductions from gross income for expenses paid or incurred during a taxable year in carrying on a trade or business are stated in general terms. As a consequence, there are many classes of claims included in this category. Because of their diversified character, it is believed that no useful purpose would be served in a detailed discussion of each.

Second in importance is the allowance of additional deductions for depreciation, which account for \$1,188,088.34, or 18.47 percent, of the total overassessments reported. The statutory allowance for depreciation is one of the more important deductions contained in the tax laws and has always been a major cause of overassessments. The scope of the subject may be readily appreciated when it is realized that in many years the total depreciation deductions were larger than the total taxable net incomes of all corporations. It involves many problems, the most common of which are the determination of what

property is depreciable; who is to be allowed depreciation; and upon what basis the deduction is to be computed.

The importance of the deductions for depreciation was recognized in studies made by the subcommittee of the Ways and Means Committee in connection with the preparation of the 1934 act. Pursuant thereto, in February 1934, the Treasury Department substantially modified the then existing regulations providing for method of computing the depreciation allowance (T. D. 4422). The amended regulations placed the burden of proof of the correctness of the deduction upon the taxpayer in all cases. The effect of the amended regulations has been an overestimate by some taxpayers and an underestimate by others. It is believed, however, that experience in the application of these regulations will ultimately result in a more satisfactory administration of this phase of the law.

Deficiencies in tax summarily assessed and the remission of interest asserted thereon rank third and sixth, respectively, in overassessment allowances. The total amount of \$1,157,777.11 is attributable to these causes. The assessments originally made in cases involving these adjustments were paid at the time of assessment by the taxpayers. Upon subsequent investigation it was disclosed that they were either excessive or erroneous. The excess of the amount actually due would, therefore, necessarily be returned.

Next in amount of allowances is the estate tax, which accounts for 8.16 percent of the total overassessments reported. Refunds necessitated by this cause total \$524,805.66 and result from the allowance of additional deductions for attorneys' fees and miscellaneous administration expenses. The records in the cases involving these adjustments disclose that the executors of the estates filed certified copies of accounts as approved by probate courts in support of their claims. Also, that the sums later claimed as deductions were undetermined when the estate-tax returns were filed. Allowances were made under the provisions of section 303 (a) (1) of the Revenue Act of 1926, as amended by section 805 of the Revenue Act of 1932, and section 403 of the Revenue Act of 1934.

Overassessments aggregating \$454,216.13 result from overstatements of taxable gain or the increase of capital loss originally reported. There has been a tax on capital gains since the income tax was introduced in 1913. No provision in the revenue acts has undergone more frequent or more radical changes. It involves the consideration of many basic concepts and often presents substantial difficulties.

The preceding detailed discussion of the principal cause of overassessments covers the first six classifications of causes and represents about 60 percent of the total overassessments. The remaining 40 percent embrace overassessment allowances of less importance from the standpoint of contributing cause.

The majority of the overassessments reported to the joint committee during the calendar year 1938, and paid after the 30-day period prescribed by law, represent accurate and careful determinations of tax liability. Of the 39 cases reported, no adverse criticism could be made on the basis of the summary of the facts and decision of the Commissioner in 35 cases. In the other 4 cases serious differences arose between the Treasury and the staff of this committee. Disposition of these cases was as follows:

One case involving two taxpayers, namely, the Atwater Kent Manufacturing Co., and A. Atwater Kent, called for proposed over-

assessments to both in the amounts of \$141,348.24, and \$112,818.90 respectively, in connection with the settlement of a deficiency in tax assessed against the first-named. While strictly speaking, the overassessments themselves were not questioned, criticism was offered by the staff to the deficiency to the extent that it affected the refund. The Bureau finally approved the overassessments, apparently upon the theory, as it contended, that the settlement was advantageous to the Government.

Another case, International Business Machines Corporation, involving \$85,077.24, was finally allowed as proposed. The staff had criticized the determinations made by the Bureau in two issues. The Bureau concurred with the views expressed by the staff in both but asserted upon a reexamination of the case that the determination originally made by them in another issue should be changed. This change, together with a mechanical error on their part, increased the amount of the overassessment first proposed, after giving effect to the criticisms offered, by approximately \$20,000. Because of this redetermination and the developments in the administrative handling of the case, it was concluded by the Bureau that the settlement as originally proposed should be consummated.

The third case involved two taxpayers; namely, the Consolidated Gas Co. of New York, and the New York and Queens Electric Light & Power Co., in the respective amounts of \$254,841.49 and \$210,452.02. No adverse criticism was offered to the allowances in favor of the first-mentioned company, but criticism was expressed with respect to those to the latter. Inasmuch as the entire case has been withheld by the Bureau pending consideration of the views expressed by the staff, it is believed that comment should be deferred until final action is taken.

The fourth case, International Match Corporation, involved \$1,951,275.50. This case is also unsettled to date and for that reason discussion thereof at this time will not be made.

Although this report is confined to overassessments in excess of \$75,000 reported to the joint committee during the calendar year 1938, it is believed advisable to include herein the total refunds and tax collections for this period. The net amount refunded on account of income and other taxes administered under the jurisdiction of the Income Tax Unit of the Bureau during the calendar year 1938 was \$24,050,305.69. The total tax collections made on account of the several kinds of taxes administered by the same unit was \$2,620,217,054.21. The following statement itemizes the various classes of collections:

Kind of tax:	<i>Amount</i>
Corporation income tax.....	\$1, 324, 293, 070. 56
Individual income tax.....	1, 244, 105, 598. 22
<b>Total income taxes.....</b>	<b>2, 568, 398, 668. 78</b>
Unjust enrichment.....	7, 371, 960. 33
Excess profits, Navy contracts.....	1, 142, 381. 14
Excess profits tax, on incomes in excess of 10 percent of capital stock value.....	43, 304, 043. 96
<b>Total.....</b>	<b>2, 620, 217, 054. 21</b>

The appendixes which immediately follow contain information on overassessments and interest for the calendar and fiscal years 1938, and are of like character as those shown in parts I and II of this section.

## APPENDIXES TO PART III

## APPENDIX A

TREASURY DEPARTMENT,  
Washington, April 28, 1939.

MR. COLIN F. STAM,

Chief of Staff, Joint Committee on Internal Revenue Taxation,  
Washington, D. C.

DEAR MR. STAM: I am submitting herewith an analysis of the overassessments in excess of \$20,000 reviewed in this office for the year 1938. This analysis is submitted to you pursuant to an oral request from your office.

The attached analysis of overassessments is similar to that submitted for the prior year.

Very truly yours,

J. P. WENCHEL,  
Chief Counsel, Bureau of Internal Revenue.

## INCOME-TAX CASES—REPORT FOR THE YEAR ENDED DECEMBER 31, 1938

The number of income-tax cases involving overassessments and made the subject of the present analysis is 153. From an examination of these cases it is found that the original taxes assessed amounted to \$43,023,343.48, additional taxes and interest assessed amounted to \$11,462,716.67, the overassessments previously allowed amounted to \$851,024.39, and the total overassessments herein analyzed amounted to \$14,048,601.78. The overassessments made the subject of this analysis involving the profits tax years 1917-21, inclusive, aggregate \$729,355.59, of which \$466,141.42 represents refund, \$85,296.07 represents credits to other years, and \$177,918.10 represents unpaid taxes abated. The sum of \$729,355.59 is 5.19 percent of the overassessments covered by this analysis, which is a decrease from that shown in the report for the year 1937, which disclosed 13.39 percent.

The following is a summary of the result obtained by this analysis with respect to income, war-profits, and excess-profits taxes:

*Analysis of overassessments of income-tax cases—Report for the year ended Dec. 31, 1938*

Classification	Refund	Credit	Abatement	Total	Percent
Department of Justice settlements.	\$964, 879. 73	\$120, 639. 42	\$548, 467. 96	\$1, 633, 987. 11	11. 63
Depreciation	102, 137. 96	992, 795. 57	4, 529. 55	1, 099, 463. 08	7. 83
Depletion	-----	425. 93	19, 367. 56	19, 793. 49	. 14
Amortization	187, 538. 69	121, 223. 83	-----	308, 762. 52	2. 20
Duplicate and erroneous assessments	328, 553. 71	-----	1, 032, 416. 04	1, 360, 969. 75	9. 69
Inventory changes	23, 358. 16	88, 119. 11	-----	111, 477. 27	. 79
Invested capital	8, 710. 65	270. 31	-----	8, 980. 96	. 07
Shift of income	307, 046. 61	455, 247. 28	-----	762, 293. 89	5. 43
Interest on deficiencies	189, 000. 20	109, 442. 11	538, 123. 04	836, 565. 35	5. 95
Penalties	241, 830. 87	12, 444. 72	444, 248. 40	698, 523. 99	4. 97
Adjustment of gross income	288, 722. 79	345, 276. 65	2, 181, 749. 40	2, 815, 748. 84	20. 04
Taxes	59, 595. 13	45, 911. 04	570. 66	106, 076. 83	. 76
Losses and bad debts	221, 893. 52	376, 848. 46	228, 927. 81	827, 669. 79	5. 89
Foreign tax credits	2, 772. 74	70, 415. 03	-----	73, 187. 77	. 52
Proceeds from sales of securities	589, 217. 50	327, 553. 17	315, 978. 05	1, 232, 748. 72	8. 77
Net losses	56, 332. 43	19, 887. 67	-----	76, 220. 10	. 54
Affiliation changes	68, 442. 93	467. 07	-----	68, 910. 00	. 49
Amounts used to retire indebtedness incurred prior to Jan. 1, 1934	172, 944. 50	-----	-----	172, 944. 50	1. 23
Miscellaneous <sup>1</sup>	511, 469. 59	1, 145, 044. 77	177, 763. 46	1, 834, 277. 82	13. 06
Total	4, 324, 447. 71	4, 232, 012. 14	5, 492, 141. 93	14, 048, 601. 78	100. 00

<sup>1</sup> This item represents adjustments for repairs, compensation of officers and employees, interest, donations, legal expenses, advertising expenses, rents, exempt organizations, mathematical errors, ordinary and necessary business expenses, changes in accounting periods, etc.

## ESTATE-TAX CASES—REPORT FOR YEAR ENDED DECEMBER 31, 1938

The cases which are covered by this analysis number 12 for the year 1938. The total original taxes assessed amounted to \$15,418,-714.37. The total additional taxes assessed amounted to \$219,827.86. The total overassessments for the year 1938 amounted to \$952,404.27, of which \$845,620.33 were refunded and \$106,783.94 were abated.

*Analysis of estate-tax overassessments*

Classification	Refund	Abatement	Total	Percent
Reduction in value of securities.....	\$123,534.14	\$56.17	\$123,590.31	12.98
Duplicate assessment.....	1,009.30	48,052.46	49,061.76	5.15
Attorneys' fees, executors' commissions, miscellaneous administration expenses, and claims against the estate.....	464,387.36	12,727.55	477,114.91	50.10
Bequests to charitable organizations.....	87,965.31	-----	87,965.31	9.23
Interest adjustments.....	4,643.74	-----	4,643.74	.49
Elimination of the value of certain property.....	164,080.48	45,947.76	210,028.24	22.05
Total.....	845,620.33	106,783.94	952,404.27	100.00

## APPENDIX B

*Comparison of overassessments of \$20,000 to \$75,000, including interest, with overassessments under sec. 710 of the Revenue Act of 1928, including interest, of income, war-profits, excess-profits, estate, and gift taxes—Calendar year 1938*

	\$20,000 to \$75,000	Over \$75,000	Total
Original assessment.....	\$7,250,223.98	\$35,773,119.50	\$43,023,343.48
Additional assessment and interest.....	7,119,430.15	4,343,286.52	11,462,716.67
Total assessment and interest.....	14,369,654.13	40,116,406.02	54,486,060.15
Deduct:			
Overassessments previously allowed.....	751,326.39	99,698.00	851,024.39
Overassessments allowed during the year.....	7,618,943.38	6,429,658.40	14,048,601.78
Total overassessments.....	8,370,269.77	6,529,356.40	14,899,626.17
Total assessments retained.....	5,999,384.36	33,587,049.62	39,586,433.98
Percent of total overassessments to total assessments and interest.....	58.25	16.27	27.34
Percent of overassessments allowed during the year to total assessments and interest.....	52.95	16.02	25.76

## APPENDIX C

*Comparison of refunds and interest under sec. 710 of the Revenue Act of 1928 with all refunds and interest, of income, war-profits, excess-profits, estate, and gift taxes—fiscal years ended June 30*

	1936	1937	1938
Total refunds to taxpayers.....	\$17,876,265.58	\$20,359,773.50	\$23,350,830.17
Interest paid on refunds to taxpayers.....	6,453,400.01	4,598,171.34	6,122,262.98
Total refunds and interest to taxpayers.....	24,329,665.59	24,957,944.84	29,473,093.15
Total refunds under sec. 710, Revenue Act of 1928.....	1,427,377.04	1,031,072.71	1,802,146.74
Interest paid on refunds under sec. 710, Revenue Act of 1928.....	550,610.84	364,384.24	423,531.11
Total refunds and interest under sec. 710, Revenue Act of 1928.....	1,977,987.88	1,395,456.95	2,225,677.85
Percent of refunds and interest under sec. 710 to total refunds and interest.....	8.12	5.59	7.55

## APPENDIX D

*Comparison of credits and interest under sec. 710 of the Revenue Act of 1928 with all credits and interest, of income, war-profits, excess-profits, estate, and gift taxes—fiscal years ended June 30*

	1936	1937	1938
Total credits and interest to taxpayers.....	\$10,777,096.33	\$17,918,052.13	\$13,488,159.44
Total credits and interest to taxpayers under sec. 710, Revenue Act of 1928.....	2,406,958.87	4,320,540.55	2,441,897.04
Percent of credits and interest under sec. 710, Revenue Act of 1928, to total credits and interest.....	22.33	24.10	18.10

## APPENDIX E

*Comparison of refunds and credits, including interest, under sec. 710 of the Revenue Act of 1928 with all refunds and credits, including interest, of income, war-profits, excess-profits, estate, and gift taxes—fiscal years ended June 30*

	1936	1937	1938
Total refunds and credits with interest to taxpayers.....	\$35,106,761.92	\$42,875,996.97	\$42,961,252.59
Refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928.....	4,384,946.75	5,715,997.50	4,667,574.89
Percent of refunds and credits with interest to taxpayers under sec. 710, Revenue Act of 1928, to total refunds and credits with interest to taxpayers.....	12.49	13.33	10.86

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SECTION III  
ANALYSES OF CASES

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PART I. ANALYSIS OF CASES REPORTED TO THE JOINT COMMITTEE  
DURING THE CALENDAR YEAR 1936

In order that a comprehensive idea may be had of the issues involved and basis upon which allowances were made, a résumé of each case, alphabetically arranged, will be shown, as follows:

AMERICAN PRINTING CO., FALL RIVER, MASS.

Overassessments, 1922, 1927----- \$117, 714. 15

Two cases, namely, *American Printing Co. v. United States*, and *American Printing Co. v. White*, were filed in the District Court for the District of Massachusetts involving the above-mentioned years to protect the plaintiff's right to receive refunds found by the Bureau to be due upon its final audit of the cases pursuant to the decisions of the courts and Board of Tax Appeals relative to depreciation issues for the taxable years 1918 and 1919.

The sole issue involved was whether the basis for computing depreciation should be the cost of certain property to the plaintiff when acquired on December 31, 1917, or cost (or March 1, 1913, value) to the transferor corporation because of the question of affiliation of the plaintiff with another corporation during the year 1917. This question was before the same court in the case of this taxpayer for the year 1919, and was also before the Board of Tax Appeals in the case of this taxpayer for the year 1918, both of which decided it adversely to the Government. No appeal was taken in the prior court case and a recommendation of dismissal of an appeal then pending before the circuit court of appeals from the prior Board decisions was recommended.

On November 26, 1935, plaintiff submitted an offer of settlement in these cases based upon a recomputation of the income-tax liability for the above-mentioned years. It was determined that this recomputation properly reflects the correct tax liability after giving effect to prior court and Board of Tax Appeals decisions, and also after giving effect to the provisions of Treasury Decision 4422 (XIII-1, C. B. 58). This recomputation, furthermore, represents a reduction of approximately \$22,000 over that originally made. Therefore, under date of December 9, 1935, the Department of Justice authorized and directed the issuance of certificates of overassessment for the years 1922 and 1927 in the respective amounts of \$27,384.94 and \$90,329.21. Under those directions payment of the sums mentioned was made in full settlement of all issues involved in the cases of *American Printing Co. v. United States*, and *American Printing Co. v. White*, supra, and the dismissal of said suits with prejudice was entered.

## COMMONWEALTH EDISON CO., CHICAGO, ILL.

Overassessments, 1929, 1930----- \$146, 706

Of the overassessments, \$137,800.47 is caused by the allowance of additional depreciation. It was determined after investigation that the deductions claimed in returns filed were inadequate and less than the reasonable allowances authorized by section 23 (k), Revenue Act of 1918, and the regulations promulgated thereunder.

The allowance of additional deductions for losses sustained upon the abandonment of certain capital assets caused \$4,347.38 of the overassessments. The deductions as originally reported were erroneously understated. Sections 23 (f) and 113 (a), Revenue Act of 1928, and the regulations promulgated thereunder.

Allowances of deductions for ordinary and necessary business expenses disallowed in the determination of taxable income for subsequent years are responsible for \$2,743.88 of the overassessments. Such expenses constitute proper deductions as provided under the provisions of section 23 (a), Revenue Act of 1928.

The amount of \$1,437.66 of the overassessments is caused by the allowance of a deduction for dividends received from domestic corporations. It was determined that such deduction was erroneously omitted from the return filed. Section 23 (p), Revenue Act of 1928.

The balance of the overassessments amounting to \$376.61 results from the elimination of a certain amount included in the gross income as determined in a prior audit. After investigation it was determined that such income was overstated. Section 22 (a), Revenue Act of 1928, and the regulations promulgated thereunder.

## DODGE BROS., INC., HAMTRAMCK, MICH.

Overassessments, 1926-28----- \$922, 207. 13

The principal cause of the overassessments shown above is due to the allowance of an additional deduction for depreciation. It was determined that the deductions claimed in the returns filed were inadequate and less than the reasonable allowances authorized by section 234 (a) (7), Revenue Act of 1926, and section 23 (k), Revenue Act of 1928, and the regulations promulgated thereunder.

Another major contributing cause due to the allowance of additional deductions for ordinary and necessary business expenses causes \$330,686.23 of the overassessments. These expenses, which were disallowed in computing the taxable income for a prior year, constitute proper deductions in the determination of the taxable income for 1926. Section 234 (a) (1), Revenue Act of 1926; article 561, regulations 69.

The amount of \$5,210.65 of the overassessments is caused by the elimination of certain amounts included in the gross income reported in the return filed. It was found that such amounts constitute income for a prior year and were included in the computation of the taxable net income for such prior year. Section 233 (a), Revenue Act of 1926, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$2,569.03 is caused by the allowance of additional deductions for amortization of bond discount, since such deductions were found to be understated in the returns filed. Section 234 (a) (1), Revenue Act of 1926.

Attention is called to the fact that while the overassessments, determined for 1926, 1927, and 1928, amount to \$922,207.13, the present audit also discloses a deficiency of \$477,647.95 for the year 1925, which results in a net overassessment of \$444,559.18 for the 4 years covered by the present audit.

GEORGIA POWER CO., TRANSFEREE OF GEORGIA RAILWAY & POWER CO.,  
ATLANTA, GA.

Overassessments, 1923, 1926----- \$85,006.65

On January 1, 1912, the Georgia Railway & Electric Co., an associated company of the taxpayer, leased certain of its properties to the Georgia Railway & Power Co. for 999 years. At that time and during the years under consideration the lessor owned 100 percent of the capital stock of the Atlanta Gas Light Co., and Atlanta Northern Railway Co. The stocks of these subsidiaries were not leased to the taxpayer, but the lease provided that the lessor assign and transfer for and during the term of the lease, the income arising from any and all of the shares, and orders and directs the above-named corporations to pay the income directly to the lessee. Subsequently, on January 1, 1920, the Atlanta Gas Light Co., Georgia Railway & Electric Co., and the Georgia Railway & Power Co. entered into an agreement whereby all properties of Atlanta Gas Light Co. were leased to the Georgia Railway & Electric Co. for 991 years and became a part of the properties leased to the Georgia Railway & Power Co. in 1912. The lease dated January 1, 1912, provided, among other things, that the lessee renew, repair, and replace the properties so as to maintain and keep them in good order. A similar provision is contained in the lease dated January 1, 1920. In view of the provisions of the leases, the Bureau in considering the cases of the lessor and lessee refused to allow any deductions for depreciation with respect to leased properties, except on additions made to such properties subsequent to the date of the leases.

The principal issues raised in the appeals filed by the Georgia Railway & Electric Co., transferor, were: (1) Whether they were entitled to deductions for depreciation on depreciable properties leased by it to Georgia Railway & Power Co., where the lessee had agreed to maintain the properties leased in the same condition as they were at the date of the lease; and (2) whether the Atlanta Gas Light Co. may be allowed deductions for depreciation on depreciable properties leased by it to Georgia Railway & Power Co. under the same conditions as stated in (1) above.

The principal issues raised in the appeals filed by the Georgia Railway & Power Co., lessee, were: (1) Whether they may be allowed deductions for depreciation on depreciable properties leased from the Georgia Railway & Electric Co. and the Atlanta Gas Light Co. on January 1, 1912, and January 1, 1920, respectively, in each of the years 1921 to 1926, inclusive; (2) whether they may be allowed deduction for depreciation in each of the years 1921 to 1926, inclusive, on amounts expended during the years 1912 to 1926, inclusive, for new construction on property leased from Georgia Railway & Electric Co. and Atlanta Gas Light Co.; and (3) whether they, if not allowed the depreciation deductions under issues 1 and 2, may be allowed deduc-

tions for amounts expended for replacing leased properties in each of the years 1921 to 1926, inclusive.

The appeals were submitted to the Special Advisory Committee (now Technical Staff of the Bureau) and under date of August 8, 1931, that committee recommended that the cases of the lessors be defended before the United States Board of Tax Appeals with respect to the above issues (*Winer v. Weiss* (279 U. S. 333)). The Board in its memoranda opinions, rendered June 16, 1933, and April 12, 1934, sustained the action of the Bureau in refusing to allow deductions to the lessor company on account of depreciation on properties leased to the Georgia Railway & Power Co., lessee. On January 30, 1935, a petition was filed on behalf of both the Georgia Railway & Electric Co. and the Georgia Power Co. as transferee, to have the decisions of the Board reviewed by the Fifth Circuit Court of Appeals. The circuit court affirmed decisions of the Board (77 Fed. (2d) 279). A petition for writ of certiorari was filed by the taxpayers on July 10, 1935, which was denied on October 14, 1935.

During the consideration of the cases by the Special Advisory Committee the Georgia Railway & Power Co., lessee, under date of November 20, 1930, submitted a detailed list of the amounts expended during the years 1921 to 1926, inclusive, for replacing depreciable leased property. The data were submitted to the field for investigation and verification and a report was made of the amounts expended to replace the leased properties by the lessees.

Pursuant to the denial of writ of certiorari in the lessor cases, the Board, on October 21, 1935, on the basis of stipulations filed, entered its orders in the Georgia Railway & Power Co., lessee, case. In stipulating the lessee's case for 1926 before the Board the interest of \$12,115.74 assessed against and paid by the Georgia Power Co., transferee, at the time a deficiency of \$71,923.97 was paid by it, was inadvertently overlooked. Since the refund of tax and interest to the Georgia Power Co., transferee, is in excess of \$75,000, the case has been considered on its merits.

The overpayment for 1923 entered by the Board is caused by allowing deductions for renewals and replacements which are practically offset by the restoration of depreciation on additions to leased property and other items.

The overpayment of tax entered by the Board for 1926 is caused by the allowance of an additional net loss for 1925. The additional net loss for 1925 is caused by allowing deductions for renewals and replacements and the restoration of depreciation and the reallocation of losses in accordance with G. C. M. 8132, C. B. IX-1, page 287 (Swift decision).

Since G. C. M. 8132, supra, was published (1930) the decision in the *Delaware & Hudson Co. case* has been rendered by the Second Circuit Court of Appeals (June 6, 1933), relative to the carrying over of net losses. On the basis of that decision, which is being followed by the Bureau in such cases, there would be no taxable income for the year 1926.

The overassessments as proposed were covered by claims timely filed and are allowable under the provisions of section 284 (b), Revenue Act of 1926.

MRS. BELLE K. JUDSON, GROSSE POINTE PARK, MICH.

Overassessment, 1929----- \$142, 493. 14

The above overassessment is caused by the elimination from income of certain amounts reported as dividends from stock and profit from the sale of stock which had been found to be the income of Ross W. Judson, husband of the taxpayer, and accordingly transferred to his net income and taxed to him. Section 22 (a), Revenue Act of 1928, and the regulations promulgated thereunder.

In this connection, it is deemed pertinent to state that a similar situation existed in connection with the years 1927 and 1928. For those years the entire income reported by the taxpayer was similarly taxed to Ross W. Judson.

ESTATE OF DR. E. A. MERCK, ALIEN PROPERTY BUREAU TRUST NO.  
47655, WASHINGTON, D. C.

Overassessment, 1919----- \$176, 142. 17

ESTATE OF CLARA MERCK, ALIEN PROPERTY CUSTODIAN TRUST NO. 47659,  
WASHINGTON, D. C.

Overassessment, 1919----- \$91, 166. 21

EMMY MERCK, ALIEN PROPERTY CUSTODIAN TRUST NO. 47660, WASHING-  
TON, D. C.

Overassessment, 1919----- \$214, 292. 89

ESTATE OF DR. WILLY MERCK, ALIEN PROPERTY BUREAU TRUST NO.  
47656, WASHINGTON, D. C.

Overassessment, 1919----- \$161, 835. 64

Inasmuch as the relevant facts concerning the above-named taxpayers are the same the following statement will cover all four cases:

Returns on Form 1040 for the year 1919 were prepared under section 3176, Revised Statutes, by deputy collectors in the names of the various individuals and assessments were made thereon in March 1924. Payments were made of these assessments for the Alien Property Custodian under trust No. 537. The incomes so taxed were due almost entirely to a reputed profit on the sale in 1919 by the Alien Property Custodian of 8,000 seized shares of stock from a domestic corporation known as Merck & Co., the amount of gain being the excess sale price above par for each share sold. Subsequently, it developed that the above-named individuals were not an individual proprietorship, but a German partnership which owned all the stock in Merck & Co. Deficiencies were then asserted for 1919 against the individual partners, in the case of the German partners through Alien Property Custodian trusts, and certain amounts of the assessments were applied as credits to these deficiencies.

The question arose as to whether from the 1919 sale of the 8,000 shares of stock in Merck & Co., any gain to the alien partners was recognizable in 1919. In a ruling by the Assistant General Counsel, dated September 19, 1934 (known as G. C. M. 13701, not printed), it

was stated that the book value of the stock when sold in 1919 had not materially changed from what it was on December 31, 1917, when the corporation redeemed 7,500 debenture bonds by issuing 7,500 shares of its stock. Thus the question was developed of whether the bondholders (formerly partners) realized any taxable gain on December 31, 1917, when they surrendered their bonds for stock in said corporation. If the exchange constituted a taxable transaction than it would follow that the recipient stockholders would realize no gain from the sale of their stock in 1919, the basis thus fixed at December 31, 1917, being the same as the selling price in 1919.

It was held in the ruling of September 19, 1934, that the exchange of debenture bonds in Merck & Co. on December 31, 1917, for stock in the same corporation constituted a taxable transaction. The German partnership, which originally owned all the 2,500 outstanding shares of stock in the domestic corporation as well as all the 7,500 bonds outstanding, was ruled on May 2, 1935 (in G. C. M. 14913, not printed), to have become dissolved on April 6, 1917, by the declaration of war with Germany. Both the debenture bonds and the 7,500 shares of stock were registered in the name of one partner, George Merck, an American citizen, but the stock and bonds were owned in reality by the partnership until April 6, 1917—and thereafter by the individual partners. It was demonstrated that George Merck became the owner of 2,000 shares out of the 10,000 shares outstanding subsequent to 1917, so that the 1919 sale was of only the 8,000 alien-owned shares. In the present audits for 1919 of these cases the shares of stock sold must be partly out of the 7,500 shares acquired through the exchange for bonds on December 31, 1917, and partly out of original shares held by the German partnership on March 1, 1913, the latter taking as a basis the March 1, 1913, value which is deemed to have been as great as the 1919 sale price.

Since the exchange of debenture bonds on December 31, 1917, each share of stock is regarded as a taxable transaction. Deficiencies have been computed for 1917 against these various taxpayers who are credited with interest of 19.1; 11.7; 22.3; 17.9 percent, respectively, in the partnership assets. In arriving at these deficiencies the total gain on exchange of stock for bonds has been computed by using a March 1, 1913, value of \$100 or par as basis for the bonds and valuing the stock received at \$468.75 per share, or the sale price in 1919. These taxpayers are also being charged with the percentage amounts shown above, respectively, of the dividends, bond interest and royalties accrued in 1917, through the partnership to April 6, 1917, and directly after that date. Since, therefore, there was no gain realized in 1919 from the sale of the stock no income tax liability could possibly have resulted.

It is understood that these four cases have been withheld from payment pending appeal of the deficiencies.

PACIFIC GAS & ELECTRIC CO., SAN FRANCISCO, CALIF.

Overassessments, 1926-28..... \$283,915.30

The above-named taxpayer operates in the State of California as a public service corporation providing electricity, gas, water, and steam heat to its customers; also supplying railway service in several municipalities. Reports have been submitted to the Joint Com-

mittee on Internal Revenue Taxation covering overassessments for prior years. For the years 1924 and 1925, submitted under date of November 5, 1934, the principal cause of the overassessments was the allowance of additional deductions for depreciation. At that time the questions as to proper rates and basis for depreciation purposes were thoroughly considered. As a result of revising depreciation rates large deficiencies were assessed against the taxpayer covering the years now under review. The present overassessments for the years 1926, 1927, and 1928 are due to adjustments made with respect to bond discount and expense as the result of rulings and decisions rendered subsequent to the previous determination resulting in the assessment of the deficiencies.

For the year 1926 the decrease in income is due to revising the deduction for amortization of bond discount allowed in a prior audit since amortization of expense on bonds issued prior to March 1, 1913, was disallowed. The Supreme Court has held in the case of *Helvering v. Union Pacific Railroad Co.* (293 U. S. 282, C. D. 901), that where prior to 1913, a corporation on the accrual basis sold at a discount bonds maturing at dates subsequent to 1923, the amount of discount and commissions paid or allowed for marketing the bonds may be amortized over the period of the life of the bonds and allowed as annual deductions from gross income. Subsequent to the decision in the *Union Pacific case*, G. C. M. 14349 was promulgated, C. B. XIV-1, page 47, which held—

expenses or obligations incurred by the taxpayer in connection with a bond issue, which are not discharged until payment of the bonds at maturity, may properly be accrued or amortized over the period of the life of the bonds and allowed as annual deductions from gross income.

For reasons previously stated with respect to the year 1926, income was increased and an additional tax, plus interest, was assessed for 1927. The present decrease is due principally to revising a prior audit whereby income was increased representing unamortized discount and expense and premium paid applicable to bonds retired. This deduction was disallowed in a prior audit because at that time such an unamortized discount and expense and premium applicable to bonds retired through the proceeds of a sale of a new issue of bonds was considered as representing an expense in connection with the new issue to be amortized together with the discount and expense attributable to the new issue over the life of the new bonds.

Treasury Decision 4603 (I. R. B. XIV-46, p. 3), approved November 9, 1935, sets forth the treatment for income-tax purposes of unamortized discount on bonds retired and premiums paid upon retirement. It is held therein:

(a) In the case of a retirement of an issue of old bonds from the proceeds of the sale of new bonds any amount paid in excess of the face value of the old bonds, less any amount of premium received when issued and not already returned as income, and any unamortized discount and unamortized expense attributable to such bonds, is deductible in the year of their retirement.

In view of this Treasury decision the deduction previously disallowed is now being allowed.

The decrease in income for the year 1928, as in the years 1926 and 1927, is due to revising the allowable deduction for bond discount and expenses and similar explanations as stated with respect to those years apply hereto.

A summary of the allowances indicates that the amount of \$211,519.98 of the overassessments is caused by additional deductions for amortization of bond discount and expense. The balance of the overassessments amounting to \$72,395.32 represents a portion of the interest assessed on previously asserted deficiencies.

SHELL OIL CORPORATION, NEW YORK, N. Y.

Overassessments, 1927, 1928----- \$367, 600. 99

The taxpayer, on May 2, 1932, anticipating deficiency notices for the taxable years 1926 to 1928, inclusive, and to avoid the running of interest, paid to the collector of internal revenue at New York an amount sufficient to cover any deficiency that might be found due for such years. In addition to this, according to the records of the collector, the taxpayer on March 15, 1928, and June 18, 1928, made further payments for the taxable year 1927, although the return for that year indicated no tax liability, and none was assessed on the basis of such return.

Under date of October 27, 1933, the Bureau issued a letter showing the amount of deficiencies due from the taxpayer. These deficiencies, together with interest as provided by law, previously had been assessed pursuant to an agreement signed by the parent taxpayer corporation and its affiliated subsidiaries. Agreement of this assessment was approved under the provisions of section 606 of the Revenue Act of 1928 by the Secretary of the Treasury. The tax liability for the several years covered by this agreement, therefore, is not open to review on merit, except for fraud, malfeasance, or misrepresentation of a material fact within the meaning of section 606. The files do not disclose evidence of any of these exceptions.

SOUTHERN CALIFORNIA GAS CO., LOS ANGELES, CALIF.

Overassessment, 1931----- \$118, 158. 96

Under date of August 3, 1934, the taxpayer signed an agreement, Form 870, agreeing to an assessment and collection of a deficiency disclosed by a 30-day letter issued July 11, 1934. The deficiency, plus interest, was paid during September 1934. On June 27, 1935, the taxpayer filed a claim for refund of income taxes in the amount shown above for the reason that the Bureau had disallowed a deduction of unamortized discount expense and premiums paid, applicable to bonds retired in 1931. This claim was predicated on the fact that the Bureau had changed its position on this point, in view of various Board and court decisions, and was now holding that unamortized expense and premiums were deductions in the year in which the bonds were retired.

With respect to this contention, it will be noted that under date of June 5, 1935, the Assistant General Counsel in considering the issues of unamortized discount and expense on bonds retired, and premiums paid upon retirement, involved in another case, held that in view of the unanimity of recent decisions of the courts and of the Board of Tax Appeals controlling the treatment of the stated items the long-established position of the Bureau relative thereto must be abandoned as untenable and cited *Helvering v. Union Public Service Co.*

(75 Fed. (2d) 723); *Helvering v. California Oregon Power Co.* (75 Fed. (2d) 644); *Helvering v. Central States Electric Corporation* (76 Fed. (2d) 1011); *East Ninth Euclid Co.* (26 B. T. A. 32 and 27 B. T. A. 1289); *National File Co.* (30 B. T. A. 32); and *Great Western Power Co. of California* (30 B. T. A. 503). Since the record in this case discloses that none of the bondholders exchanged their old bonds for new bonds and there were two separate transactions involved in the sale of the new bond issue, it is believed the original ruling of the Bureau should be reversed. The present position of the Bureau is covered by Treasury Decision 4603 (I. R. B. No. 46, vol. XIV, p. 3, dated Nov. 18, 1935). This adjustment causes \$103,589.51 of the above-mentioned overassessment. The balance of the overassessment amounting to \$14,569.45 represents a portion of the interest assessed on the previously asserted deficiency.

## PART II. ANALYSIS OF CASES REPORTED TO THE JOINT COMMITTEE DURING THE CALENDAR YEAR 1937

A résumé of each case submitted to the committee during 1937 follows. Those concurred in by the staff will first be presented, followed by those wherein disagreement resulted. Report is also made of one case which was returned to the Bureau without being reviewed.

### CASES NOT CRITICIZED

MRS. LUCY SMITH BATTSON, LOS ANGELES, CALIF.

Overassessments, 1931, 1934----- \$76, 643. 59

The amount of \$72,318.27 of the overassessments is caused by the allowance of additional deductions for losses sustained on certain assets which became worthless during the taxable years. It appears that the taxpayer, prior to July 31, 1931, had advanced certain amounts represented by interest-bearing notes to corporations on which interest had accrued to July 31, 1931. The taxpayer accepted as security from the various corporations shares of common and preferred stock; also a trust deed and chattel mortgage. The properties of some of these corporations were foreclosed in 1933 and 1934. The record discloses that a detailed valuation of the properties of these companies was made by revenue agents. After a thorough review of numerous factors bearing upon the value of the companies' properties the value of the stocks was determined.

It was held that the exchanges involving the acceptance of common and preferred stocks in cancelation of the loans made by the taxpayer, as above stated, constituted transactions under which gain or loss are recognized under section 112 (a) of the Revenue Act of 1928.

The balance of the above overassessments, amounting to \$4,325.32, is caused by the allowance of additional deductions for debts ascertained to be worthless and charged off within the taxable year. These deductions were omitted from the returns filed and are now allowed under the provisions of section 23 (k)-1, regulations 86.

## BROWN SHOE CO., INC., ST. LOUIS, MO.

Overassessments, 1931-33----- \$93,376.11

The principal issues in connection with the above overassessments relate to the method of treating expenditures for lasts, dies, and patterns, and to a proper determination for depreciation sustained on buildings, machinery, and equipment used in connection with the taxpayer's business.

In the returns filed for these years, the taxpayer claimed the entire costs as expense. Upon consideration of the case by the income tax unit, it was determined that the amounts claimed should be capitalized and depreciated over a life of 2 years. Accordingly, the amounts were restored to income and depreciation allowed thereon. The case was considered by the technical staff and as a basis for closing these years it was agreed to permit the taxpayer to deduct as expenses the entire amounts expended during these years and to increase the deductions for depreciation.

A small amount of the above overassessments is caused by the remission of interest assessed on previously asserted deficiencies.

## CLINTON COTTON MILLS, CLINTON, S. C.

Overassessment, 1918----- \$150,000

Four actions were instituted by the above-named taxpayer in the eastern district of South Carolina to recover income and excess-profits taxes for the years 1917 to 1922, inclusive, and interest thereon from the several dates of payment. Two of these actions were against the United States and two against John F. Jones as collector of internal revenue. The complaints allege errors by the Commissioner in his determination of plaintiff's income and excess-profits taxes for the several years involved. One of the suits against the United States involving the year 1921, was not timely instituted and the plaintiff abandoned that action.

The issues involved in these suits may be summarized as follows:

1. What was the fair market value of plaintiff's depreciable property on March 1, 1913?
2. What was the proper rate of depreciation on plaintiff's depreciable property for the taxable years involved herein, 1917 to 1922, inclusive?
3. Did the Commissioner err in adjusting the closing inventories for the year 1920?
4. Were the payments, including interest payments on an additional assessment for 1916, collected after November 11, 1924, outlawed by the applicable statute of limitations when collected?
5. Were the claims for refund for the years 1917 and 1918 timely as to all tax payments for those years?
6. What are the proper adjustments of invested capital for the years 1917 to 1920, inclusive?

According to the record, the court decided the issues of March 1, 1913, value and accelerated depreciation in favor of the plaintiff. Such issues were questions of fact which would not have been reviewed by the circuit court of appeals. Furthermore, it is believed that plaintiff would have recovered at least \$195,000 and had a chance of success as to the three issues remaining undecided which might have amounted to an additional recovery of \$239,000.

On February 27, 1937, the Acting Attorney General, by virtue of the authority vested in him by Executive Order No. 6166, accepted the offer made on behalf of the plaintiff in the above-mentioned cases to settle upon the basis of a refund of \$150,000, all interest to be waived. Under this acceptance payment of the sum mentioned was made in full settlement of all issues involved in the cases of *Clinton Cotton Mills v. United States* and *Clinton Cotton Mills v. Jones*, and dismissal of said suits with prejudice is to be entered.

## COMMONWEALTH EDISON CO., CHICAGO, ILL.

Overassessment, 1931----- \$90,399.24

The overpayment for the taxable year shown above represents a payment of income tax made by this taxpayer on March 15, 1932, upon the filing of its tentative return. The final return, filed within the extensions of time granted by the Commissioner, pursuant to statutory authority, disclosed no tax liability. The amount of payment in question had not been assessed and was carried in the accounts of the collector of internal revenue, first district of Illinois, as an excess collection to be adjusted in the settlement of a deficiency assessment of income tax for the year 1932.

This taxpayer was incorporated September 17, 1907, in the State of Illinois, and is engaged in the generating and selling of electricity. Consolidated returns were filed for the year 1931, including 25 subsidiary companies, 11 of which are active. The entire capital stock of these affiliates is owned by the Commonwealth Edison Co.

Inasmuch as there is no tax liability for the year 1931, the erroneous payment by the taxpayer constitutes an overpayment allowable as a refund or credit under the provisions of section 322 (b) (1), Revenue Act of 1928, on the basis of a claim for refund filed December 12, 1933, within the 2-year period of limitations prescribed therein.

## ESTATE OF THOMAS EWING, JR., NEW YORK CITY

Overassessment, 1933----- \$146,212.17

The overassessment of estate tax represents the excess of tax assessed over the actual tax liability as determined after investigation.

Thomas Ewing, Jr., a citizen of the State of New York, died on February 8, 1933. The executors of the estate filed an estate tax return on February 8, 1934, which disclosed net estates of \$965,410.72 and \$972,633.22 under the Revenue Acts of 1926 and 1932, respectively, and a tax liability of \$84,484.65, which was assessed. On December 29, 1933, the executors deposited with the collector of internal revenue for the fourteenth district of New York the sum of \$100,000 as an advance payment, and the assessment of \$84,484.65 was satisfied from the advance payment. When the executors filed the estate tax return on February 8, 1934, they made another advance payment of \$175,000, even though the return filed showed a tax liability less than the first advance payment of \$100,000. In January 1935 an additional assessment was made in the amount of \$190,515.35, representing the advance payment of \$175,000 made on February 8, 1934, and \$15,515.35, the balance of the advance payment of \$100,000 made on December 29, 1933, after deducting the assessment of \$84,484.65 made in February 1934.

Under date of December 24, 1936, a claim was filed for the refund of \$271,422.60, based principally upon reductions in the values of various securities as reported in the estate tax return. The claim for refund was filed within the 3-year period provided by section 319 (b), Revenue Act of 1926, as amended by section 810 (a), Revenue Act of 1932.

An audit of the estate tax return, discloses net estates of \$1,316,217.65 and \$1,325,398.75 under the Revenue Acts of 1926 and 1932, respectively, and results in a total tax liability of \$187,825.76. The evidence filed, however, discloses that the taxpayer is entitled to a credit of \$59,037.93 for estate taxes paid to the States of New York and Alabama. The credit of \$59,037.93 is equal to 80 percent of the tax liability of \$73,797.41 computed under the Revenue Act of 1926. The allowance of the credit of \$59,037.93 results in a net tax liability of \$128,787.83, or an additional tax of \$44,303.18 over the amount shown in the estate tax return. However, due to the fact that an additional assessment was made in January 1935 of \$190,515.35, representing the amount of the advance payments in excess of the tax liability shown on the estate tax return, there is in fact an overassessment of \$146,212.17 instead of a deficiency. It is obvious, therefore, that the overassessment is due to the assessment of the advance payments made by the executors and not to decreases in the net estates as reported.

The net estates as now determined result from a careful consideration of all relevant factors entering into the determination of the fair market values of the properties owned by the estate, and were determined after field investigations and conferences held with the representatives of the estate. In arriving at the net estates as determined in the present audit an additional deduction of \$42,913.64 has been allowed for executors' commissions, but the deductions claimed for miscellaneous administration expenses and debts of the decedent have been decreased by the amount of \$31,891.09. The deductions now allowed are considered proper under the provisions of section 303 (a) (1), Revenue Act of 1926.

THE GERRY ESTATES, INC., NEW YORK CITY

Overassessment, 1932----- \$100,927.33

The amount of \$88,928.12 of the overassessment results from the allowance of a deduction for bad debts ascertained to be worthless and charged off during the taxable year. (Sec. 23 (j), Revenue Act of 1932; article 194, regulations 77.) The basis for the claim is an alleged loss on debenture bonds of Hotel Pierre, Inc., New York City, in the amount of \$646,750.

The allowance as a deduction for the worthlessness of the bonds in question was made by the Bureau pursuant to the recommendations contained in valuation reports dated December 4, 1934, and November 20, 1935.

The balance of the overassessment amounting to \$11,999.21 represents a portion of the interest assessed on a previously asserted deficiency.

HAVANA ELECTRIC RAILWAY, LIGHT & POWER CO., AND SUBSIDIARY,  
NEW YORK, N. Y.

Overassessments, 1913-18 ----- \$179, 520. 88

The principal cause of the above overassessments in the amount of \$163,927.87 results from the allowance of additional deductions for depreciation.

The taxpayer was incorporated March 26, 1912, under New Jersey laws, and acquired for its \$30,000,000 capital stock all the stock of two other corporations; one a domestic and the other a Cuban corporation, named respectively, the Havana Electric Railway Co. and the Compañia de Gas y Electricidad de la Habana, amounting to \$18,500,000 par value, plus cash of \$3,500,000. About 1 year later the Havana Electric Railway Co. and the Compañia de Gas y Electricidad de la Habana were liquidated and their property taken over by the Havana Electric Railway, Light & Power Co.

The basis used by the unit in computing invested capital is stated in an informal memorandum dated October 16, 1926 (G. C. M. 554). It was recommended therein that the difference between the \$30,000,000 par of taxpayer's stock issued in 1912 and the par value of the two subsidiaries liquidated in 1913, or \$18,500,000 plus their surplus, should be regarded as intangibles, and the depreciable tangibles should be computed by using the property accounts shown in the annual reports as of January 1, of each year, as a starting point, and eliminating all nontangible items. The reason given for resorting to this method of determining the depreciable assets is that the old records are not sufficiently complete to permit of an accurate determination.

The Bureau previously held that under the provisions of section 326 of the Revenue Act of 1918, the value of tangible property paid in for stock and not the value of the stock issued after the property has been paid in constitutes the proper basis for determining capital. It was then held that under the provisions of S. O. 131, C. B. I-1, page 18, and L. O. 1108, C. B. III-1, page 412, gain or loss on liquidation of the old companies in 1913 should be considered in computing invested capital, that is, that invested capital of the taxpayer should be the value of tangible and intangible assets received at the date of liquidation of the subsidiaries without regard to any liquidation on intangibles.

Upon consideration of these points, the unit reported that the books of the taxpayer are in Habana, Cuba, and that repeated efforts to secure the value of the assets at the time of reorganization had been without success. It appears from the information submitted by the taxpayer that the reorganization in 1912 was on the basis of book value of the assets of the old company and that no segregation was made as between tangible and intangible assets. According to the taxpayer's statement, no appraisal or inventory of the assets was taken at the time of reorganization. It is also disclosed that no balance sheets, as of the dates of liquidation of the old companies in April and June 1913, are available.

Since apparently it was found impracticable, if not impossible, to value the assets of the old companies in May 1912, the basis of valuing the same is measured by market quotations of the stock of the old companies immediately prior to the exchange of such stock for stock of the new company. In view of this, it was believed best under the circumstances to accept the value of the assets of the old companies in May 1912, as representing their value at the time of dissolution in 1913.

The amount of \$9,403.86 of the overassessments results from the allowance of additional deductions for amortization of bond discount, interest, and taxes. It was determined that such deductions were understated in the returns filed. Section IIB, Revenue Act of 1913; section 12 (a), Revenue Act of 1916; section 234 (a), Revenue Act of 1918, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$6,189.15 is caused by the elimination of certain amounts included in the gross income reported in the returns. After investigation and consideration in the Bureau, it was determined that such income was overstated. Section 2 (a), Revenue Act of 1916, as amended by section 1200, Revenue Act of 1917.

WILLIAM RANDOLPH HEARST, NEW YORK, N. Y.

Overassessment, 1930----- \$242,759.02

The overassessment represents a settlement by the technical staff of the Bureau of the taxpayer's income-tax liability for the years 1929 and 1930. The settlement reflects a deficiency in tax in the amount of \$243,354.87 for the year 1929 and an overassessment of \$242,759.02, for the year 1930. The entire overassessment for the year 1930 is to be applied as a credit against the proposed deficiency in tax for the year 1929. Accordingly, no part of the overassessment for 1930 will be refunded to the taxpayer.

Two basic issues were involved in the settlement which may be summarized as follows:

1. Whether the Bureau correctly determined that the distributions of 10,014 shares of Homestake Mining Co. stock and 7,500 shares of Cerro de Pasco Copper Corporation stock made to the taxpayer on January 2, 1929, by Hearst Estate, Inc., and having an aggregate fair market value on that date of \$1,593,239.25, was essentially equivalent to the distribution of a taxable dividend within the meaning of section 115 (g) of the Revenue Act of 1928.

2. Whether the Bureau correctly determined that the rental and use value of residences and art objects belonging to certain corporations constituted taxable income to the taxpayer in the amount of \$1,195,606.83 and \$1,277,266.66 or any other amounts, for the years 1929 and 1930, respectively.

With respect to the first issue, it was ultimately agreed as a basis for closing these years, that the distribution should be considered as a dividend distribution.

In the second issue, it was agreed to include in the taxpayer's taxable income for each of the years 1929 and 1930, \$48,000 in lieu of the amounts stated above.

JOHN SHERMAN HOYT, NEW YORK, N. Y.

Overassessment, 1930----- \$90, 159. 69

The taxpayer filed his income tax return for the year 1930 on March 14, 1931, showing ordinary net income of \$73,804.24, capital net gain of \$668,910.97, and income taxes of \$90,159.69 were assessed and paid.

Included in capital net gain were profits aggregating \$609,632.03 on the sale of stock in the Continental Insurance Co. and Fidelity-Phenix Fire Insurance Co. In the determination of the above profit the taxpayer used as the basis the original cost of stock in the Fidelity and Casualty Co. exchanged for the above-mentioned stocks in 1929, on the theory that the exchange in 1929 was nontaxable.

It has since been determined that the exchange in 1929 of stock in Fidelity and Casualty Co. for stocks in Continental Insurance Co. and Fidelity-Phenix Fire Insurance Co. constituted a taxable exchange within the provisions of section 112 (a) of the Revenue Act of 1928 and that the stock in Continental Insurance Co. had a value of \$89.75 per share as of the date of exchange and that in Fidelity-Phenix Fire Insurance Co. a value of \$106 a share. On this basis there was determined a deficiency of \$106,403.47 for the year 1929 which has been assessed.

Accordingly, upon the sale of the stocks held in Continental Insurance Co. and Fidelity-Phenix Fire Insurance Co. in the year 1930, the bases used in the determination of the profit or loss on the sale are those used in the determination of the profit on the exchange in 1929. Section 113, Revenue Act of 1928. Using the values of \$89.75 per share for stock in Continental Insurance Co. and \$106 per share for stock in Fidelity-Phenix Fire Insurance Co. results in losses of \$117,123.92 and \$124,388.90 on the sales of the respective stocks, or a total loss of \$241,512.82. These stocks being received in a taxable exchange less than 2 years prior to the sale thereof, the loss represents an ordinary loss. Section 101, Revenue Act of 1928. As the above loss exceeds the corrected ordinary income and the remaining capital net gain, there is no tax liability.

ESTATE OF EDWARD J. HUGHES, NEW YORK, N. Y.

Overassessment, 1929----- \$98, 967. 25

The only issue involved in this case is whether or not the transaction entered into by the above-named decedent as sole stockholder was a statutory reorganization thereby negating income tax liability for amounts received incident thereto.

During the year 1930, the Ballwood Co., of which decedent was the sole stockholder with the exception of certain qualifying shares entered into an agreement with the Midwest Pipe & Supply Co., providing that said Ballwood Co. would organize a corporation to be known as the Ballwood Pipe Fabricating Corporation and transfer thereto certain assets representing approximately 29 percent of its properties in return for the entire capital stock of said Ballwood Pipe Fabricating Corporation amounting to 5,000 shares.

The Ballwood Co. agreed to transfer the 5,000 shares received by it to the Midwest Pipe & Supply Co. in exchange for 1,000 shares of common stock and 3,500 shares of preferred stock of the latter company. At the time the stockholders of the Ballwood Co. approved the agreement with the Midwest Pipe & Supply Co., they authorized the distribution of the common and preferred stock received to their common-stock holders. In pursuance of this agreement Edward J. Hughes received this stock, the aggregate value of which amounted to \$500,000.

The record of the case indicates that Edward J. Hughes died January 20, 1930. On March 6, 1930, a tentative income tax return for the calendar year 1929 was filed by the executors of the decedent's estate, showing no tax liability. A final determination was filed May 15, 1930, showing a net income of \$28,302.69 and a tax liability in the sum of \$9,394.09, upon which tax was paid. Execution of a waiver extended the statutory period of limitations to December 31, 1932. As a result of a field investigation, the ordinary net income was determined to be \$527,180, the increase due principally to the inclusion of the \$500,000 above-mentioned dividend. This resulted in a deficiency of \$87,599.69, upon which notice was given. Assessment of this amount, plus \$11,367.56 interest, was made on May 27, 1932.

In the determination of the deficiency for 1929, the Bureau assumed that the shares received by Hughes constituted a liquidating dividend rather than a statutory reorganization. The United States Board of Tax Appeals and the Circuit Court of the Third Circuit concurred in this determination. On June 3, 1936, however, the circuit court of appeals (84 F. (2d) 733) reversed its former decision and held that the transaction was a tax-free reorganization. The court cited *Watts v. Commissioner* (75 F. (2d) 981, (C. C. A. 2d), *Helvering v. Minnesota Tea Co.* (296 U. S. 378), and *G. & K. Manufacturing Co. v. Helvering* (296 U. S. 389), in support thereof. Petition for certiorari was not filed after the appeals court decision.

The evidence in this case clearly shows that Mr. Hughes did not surrender any of his shares of stock in the Ballwood Co. at the time he received the securities of the Midwest Pipe & Supply Co. Also, a copy of the minutes of the meeting of the stockholders of the Ballwood Co. held in March 1929, revealed that the distribution of the Midwest securities was authorized and directed concurrently with approval of the reorganization agreement.

The certificate of overassessment was issued in this case pursuant to directions contained in letters from the Department of Justice. Under those directions, payment of the sum mentioned herein was made in full settlement of all issues involved in the case of *Axel V. Beeken and Henry Sternberger, Executors, Estate of Edward J. Hughes v. United States*, pending in the United States District Court for the District of New Jersey, and dismissal of said suit with prejudice is to be entered.

KENNECOTT COPPER CORPORATION, NEW YORK, N. Y.

Overassessment, 1924----- \$76, 535. 10

This is a stipulation case made by the Attorney General by virtue of the authority vested in him by Executive Order 6166 and represents settlement of a suit filed in the United States Court of Claims (*Kennecott Copper Corporation v. United States*, No. 43340).

The refund is caused entirely by the deduction and credit allowed for foreign taxes and the elimination of interest previously assessed and paid in connection with the tax now being refunded.

The taxpayer was and is a domestic corporation, organized under the existing laws of the State of New York, with its principal office and place of business in New York City. During the entire calendar year 1924, it was affiliated with five companies, one of which was the Braden Copper Co. The above-named taxpayer was the parent company of the affiliated group. In 1924 the income-tax liability for the group was determined by the Commissioner on a consolidated return basis and original and additional taxes were assessed against and paid by the Kennecott Copper Corporation pursuant to an agreement of the affiliated group.

For the year 1924 in addition to the tax paid on income reported, a deficiency was assessed which, together with interest, was duly paid.

Under date of February 16, 1934, the taxpayer filed a claim for refund of the amount shown above in respect to the 1924 taxes and interest collected. The basis of the claim was that the taxpayer's 1924 taxes had been overpaid because the Commissioner had failed to allow the proper credit under section 238 of the Revenue Act of 1924 for taxes on 1924 income paid to the Republic of Chile by Braden Copper Co. Payment of the sum mentioned herein was made in full settlement of all issues involved in the suit filed, and the dismissal of said suit with prejudice is to be entered.

ESTATE OF EDWARD J. KING, NEW YORK, N. Y.

Overassessment, 1935..... \$77, 270. 84

The above amount represents an overassessment of estate tax which results from the allowance of additional deductions on account of previously taxed property included in the gross estate. Investigation discloses that such property was received by bequest from persons who died within 5 years prior to the death of the decedent, and was subjected to tax as part of the gross estates of the prior decedents. Section 303 (a) (2), Revenue Act of 1926, as amended by section 806, Revenue Act of 1932, and by section 402, Revenue Act of 1934, and the regulations promulgated thereunder.

PIEDMONT DEVELOPMENT CORPORATION, WILMINGTON, DEL.

Overassessment, 1933..... \$83, 875. 94

The taxpayer properly filed a consolidated return for the fiscal year ended June 30, 1933, on the accrual basis, including its wholly owned subsidiary, Piedmont Finance Co. The return disclosed a net income for the Piedmont Development Corporation and a loss for the Piedmont Finance Co., the result being a consolidated loss. In the determination of the reported loss of the subsidiary, deductions were claimed due to a loss on participating certificates, shares of North Carolina Bank & Trust Co. stock claimed to be worthless, and an assessment on the above stock.

The Bureau disallowed the deductions, and assessed a deficiency in tax, plus interest. The loss on participating certificates was disallowed because sustained prior to the fiscal year ended June 30, 1933, and the

loss on the stock was disallowed because it was held that Piedmont Finance Co. was not the bona fide owner of the stock. The question of the ownership of North Carolina Bank & Trust Co. stock was before the Supreme Court of North Carolina at that time. The loss on the participating certificates remains disallowed in the present overassessment. The North Carolina Bank & Trust Co. was organized in 1929 to take over assets of several banks in North Carolina which had been operating under restrictions. In May 1933 the North Carolina Bank & Trust Co. suspended operations and the North Carolina Commissioner of Banks took over administration of the company. On June 22, 1933, a 100-percent stock assessment was levied.

The suit by the commissioner of banks was removed to the United States District Court of Middle District of North Carolina. *Hood, Commissioner of Banks et al. v. Richardson et al.* (180 S. E. 706). On October 30, 1936, the United States District Court for Middle District of North Carolina, in the bankruptcy proceedings of Piedmont Finance Co., found that the company was the bona fide owner of 27,458 shares of stock in North Carolina Bank & Trust Co.

While there has been some question with respect to the ownership of the stock in North Carolina Bank & Trust Co., the Piedmont Finance Co. was not a party to that suit and has not denied its ownership of the stock, nor has it denied its liability for the assessment. It, therefore, appears that as the taxpayer was on the accrual basis it was not compelled to wait for the conclusion of the above-mentioned suit before claiming the deduction in question. I. T. 2617, C. B. XI-1, 29, as modified by I. T. 2843, C. B. XIV-1, 77.

The amount of \$74,981.86 of the above-indicated overassessment is the result of the allowance of the deductions heretofore stated. The balance of the overassessment amounting to \$8,894.08, represents interest assessed on a previously asserted deficiency.

MRS. FLORENCE M. QUINN, LOS ANGELES, CALIF.

Overassessments, 1927-31 ..... \$240, 604. 13

The principal cause of the overassessments for this taxpayer results from the elimination of certain amounts included in gross income as dividends received from domestic corporations. It was determined that such amounts do not constitute taxable income under the provisions of sections 201 (c) and (h) and 213 (a), Revenue Act of 1926, and sections 22 (a) and 115 (c) and (h), Revenue Act of 1928, and the regulations promulgated thereunder.

A recomputation of the capital net gain is the cause of \$26,399.34 of the overassessments since it was determined that the capital net gain reported in the return was erroneously overstated. Section 101, Revenue Act of 1928; article 501, Regulations 74.

The amount of \$639.73 of the overassessments is caused by the allowance of additional deductions for a loss sustained upon the sale of certain assets. Investigation discloses that such deduction was omitted from the return filed. Section 23 (e), Revenue Act of 1928.

The balance of the overassessments, amounting to \$15.60, is caused by the allowance of an additional credit for taxes withheld at the source in accordance with section 33, Revenue Act of 1928.

## RUBEL CORPORATION, NEW YORK, N. Y.

Overassessment, 1934----- \$144, 634. 26

Of the overassessment, \$133,092.98 is caused by the allowance of additional deductions for losses sustained upon the sale of certain securities. It was determined, after investigation and consideration of the facts pertinent thereto, that such deductions were omitted from the return. Sections 23 (f) and 101, Revenue Act of 1932, and the regulations promulgated thereunder.

The allowance of additional deductions for depreciation causes \$8,546.73 of the overassessment. It appears that the deductions claimed in the return were inadequate and less than the reasonable allowances authorized by section 23 (k), Revenue Act of 1932.

The balance of the overassessments, amounting to \$2,994.55, results from the allowance of additional deductions for ordinary and necessary business expenses, taxes, and interest. Such deductions were understated in the return filed. Section 23 (a), (b), and (c), Revenue Act of 1932.

## ESTATE OF HENRY R. TAYLOR, NEW YORK, N. Y.

Overassessment, 1925----- \$106, 724. 16

On December 18, 1933, the executor of the above-named estate, City Bank Farmers Trust Co., instituted a suit against Charles W. Anderson, collector, in the United States District Court for the Southern District of New York, to recover Federal estate taxes and interest based upon the claims for refund filed by the plaintiff and rejected by the Commissioner.

On June 14, 1937, the Attorney General, by virtue of authority vested in him by Executive Order No. 6166, accepted an offer made on behalf of the plaintiff to settle the suit upon a basis which would result in a refund of the amount shown above, together with interest.

Two questions were involved; namely, (1) the value of certain items which deal with property identified as having been taxed in a prior estate and received by the present decedent by gift, bequest, devise, or inheritance, and (2) the amount allowed as a deduction from decedent's gross estate on account of the inclusion in the decedent's gross estate of the property received by him by gift, bequest, devise, or inheritance from a prior estate.

The records disclose that subsequent to the date of decedent's death, the executor of the estate of Henry A. C. Taylor, the prior decedent, paid to the executor of the estate of this decedent \$148,315.47, which amount represented decedent's undistributed interest in the residuary estate of his father. It was claimed by the plaintiff that the amount should be allowed as a deduction as representing property identified as having been previously taxed or received in exchange therefor. In determining this issue, reference was made to section 303 (a) (2) of the Revenue Act of 1924.

It also appears that decedent received from time to time cash distributions from the prior estate, which were deposited in his own bank account. Certain securities taxed in the prior estate were distributed to him and later sold, and the proceeds deposited in his own bank account. Various purchases of stock were made by the decedent from the commingled accounts.

Henry A. C. Taylor, the prior decedent, died on May 28, 1921, and the present decedent died on December 4, 1925. The purchases above mentioned represent property purchased by the decedent through withdrawals from the commingled accounts, which consisted of the proceeds of property which had been included in the prior estate and property which came from other sources.

The rule adopted by the Court in the case of *United States v. Rodenbough* (21 F. (2d) 781, D. C. 25 F. (2d) 13 (C. C. A. 3d)), has been followed in the settlement of this issue. The Court in that case held that—

where withdrawal is made for purchases of securities, it is assumed that this money came from sources other than the proceeds of securities which were a part of the prior decedent's estate, if there is sufficient balance of that nature with which to make the purchase of securities. Where withdrawals are made for other purposes, it is assumed that the withdrawals came from the proceeds of securities which were a part of the prior decedent's estate to the extent that there are sufficient funds for that purpose.

THORNE, LOOMIS & CO., INC., NEW YORK, N. Y.

Overassessment, 1933----- \$146, 167. 29

The sole issue involved in this case is the propriety of allowance of losses reported from the sale of stocks and securities to offset profits from liquidation of subsidiary companies.

After a careful examination of the records in this case it was decided that the determination by the taxpayer and the Bureau that these transactions were nontaxable was properly supported by section 112 (b) (5), Revenue Act of 1928, and section 141, Revenue Act of 1932; article 37 (a), Regulations 78.

THE WEST PENN ELECTRIC CO., PITTSBURGH, PA.

Overassessment, 1933----- \$79, 632. 48

The overassessment represents portions of income taxes assessed and paid on the basis of consolidated returns filed, respectively, by the West Penn Electric Co. and several affiliated subsidiaries, and by the Potomac Edison Co. and several affiliated subsidiaries. The entire tax liability indicated by each return was paid during the year 1927, and refund claims covering the proposed adjustments were filed within the 3-year period provided in section 284 of the Revenue Act of 1926. The entire overassessment has been allocated to the West Penn Electric Co. in accordance with an allocation agreement signed by all affiliated companies.

The facts are as follows: For the taxable years under consideration, both the West Penn Electric Co., together with 31 of its affiliated subsidiaries, and the Potomac Edison Co. (a wholly owned subsidiary of the West Penn Electric Co.), together with 18 of its affiliated subsidiaries, filed consolidated income-tax returns. The return of the first-named company was sent to the collector of internal revenue at Pittsburgh, Pa., while that of the second was sent to the collector of internal revenue at Baltimore, Md. Upon the ground that the return of the Potomac Edison Co. for the year 1926 was filed inadvertently, the real intention being that such return should be consolidated with the return of the West Penn Electric Co., an allocation

agreement, evidencing consent and approval to the consolidation, was joined in by all the affiliated companies under date of December 9, 1930. Receipt of this agreement was duly acknowledged by the Bureau on December 13, 1930. Since no separate returns were filed by any of the affiliated companies, but, on the contrary, an apparent attempt had been made to join in the filing of a consolidated return, the Income Tax Unit made the present determination on the basis of the consolidated net income of all companies affiliated within the meaning of section 240 of the Revenue Act of 1926. Authority for such action is found in G. C. M. 8093, C. B. IX-1, page 147.

#### CASES CRITICIZED

COMMERCIAL TRUST CO. OF NEW JERSEY, TRUSTEE UNDER MORRIS GUGGENHEIM TRUST FOR LUCILE G. BONAR, JERSEY CITY, N. J.

Overassessment, 1929----- \$99,336.59

The refund in this case is an administrative one made by the Commissioner of Internal Revenue at the direction of the Attorney General. Such direction resulted from the acceptance by the latter official, by virtue of authority vested in him by Executive Order No. 6166, of an offer in compromise on behalf of the taxpayer in the above-named and another related case not before this committee.

At the request of the Assistant Attorney General, the case was considered by the Joint Committee on Internal Revenue Taxation. Its opinion sustained that of the staff so far as the merits of the refund were concerned. However, since the Department had the function of making the final decision as to whether to compromise a tax in litigation, the committee did not feel warranted in considering the effect upon the allowability of the refund of the unqualified acceptance of the taxpayer's offer prior to reference of the case to it and, accordingly, suggested to the Department that it proceed with the disposition of the case as it deemed best.

Based upon this expression by the Joint Committee on Internal Revenue Taxation with respect to the matter of the unqualified acceptance of the taxpayer's offer, together with a subsequent written agreement from the taxpayer's counsel that the stock acquired during the 1929 reorganization would retain the cost basis originally attributed to it, the Department of Justice in July 1938 while agreeing with the committee that the defense of the barred deficiency, if correct, would more than offset the refund claimed, finally decided not to avail itself of this fact and directed the administrative payment of the refund in question.

FERROCARRIL DEL PACIFICO DE NICARAGUA, PORTLAND, MAINE

Overassessments, 1919, 1920, and 1923 to 1928, inclusive-- \$372,879.06

This case, because of the peculiar facts and circumstances in connection therewith, was especially considered by the members of the joint committee.

The overassessments proposed resulted, in part, from a recommendation by the Office of the Chief Counsel for the Bureau of Internal Revenue in connection with the settlement of a claim by this Govern-

ment against the Government of Nicaragua. By the terms of that settlement a debt of the Nicaraguan Government to the United States in the amount of \$484,226.84, principal and interest, for the sale of arms and munitions, was to be applied against the above-indicated overassessments. Since these overassessments, together with interest, amounted to approximately \$640,000, a balance of more than \$156,000 remained after such adjustment in favor of the Government of Nicaragua. The settlement, however, called for the actual payment of only \$72,000 of the balance in full satisfaction of the respective claims of the two Governments.

The result of the presentation of the above case by the staff to the members of the committee was that on December 7, 1937, a resolution was adopted to the effect that it was the sense of the committee on a preliminary presentation of the facts that the proposed refund should not be made. Upon being advised of this resolution, the Under Secretary of the Treasury, in a letter dated December 15, 1937, informed the Chief of Staff of the Joint Committee on Internal Revenue taxation that no further action would be taken in the case by the Department looking toward any refund.

GROUP NO. 1 OIL CORPORATION, PONCA CITY, OKLA.

Overassessments, 1925 to 1932, inclusive..... \$438, 300. 88

The above-indicated refund was submitted to this committee under date of March 23, 1937.

Of the total overassessments, \$419,089.24, proposed for the years 1925 to 1930, inclusive, was attributable to deficiencies which were duly assessed and paid. The balance, totaling \$19,211.64, represented portions of income taxes assessed and paid on the basis of original returns for 1931 and 1932. The chief cause for these deficiencies and for the overassessments was the method used in treating payments pursuant to permits or lease from the State for oil purchased. In fact, \$318,187.59 of the total proposed allowance was traceable to this cause.

The question here involved was discussed between representatives of the Chief Counsel's Office for the Bureau of Internal Revenue and the staff of the joint committee. Subsequently, the matter was considered by both the Under Secretary of the Treasury and the General Counsel for the Treasury, with the result that it was finally decided to follow the recommendations of the staff of the joint committee. The result of this decision, therefore, was that the overassessments originally proposed in the amount of \$438,300.88 were reduced to \$20,014.26.

CASE RETURNED TO BUREAU WITHOUT REVIEW

THE BLOCH BROS. TOBACCO CO., WHEELING, W. VA.

Overassessments, 1933-35..... \$334, 211. 79

Under date of December 9, 1937, a report was submitted to the joint committee for the above-named taxpayer covering overassessments of processing taxes in the amount and for the period shown above. The staff, on December 10, 1937, returned the report to the

Bureau without reviewing it inasmuch as it was considered not within the jurisdiction of the committee. This action was based on the language of section 710 of the Revenue Act of 1928, which constitutes the committee's authority for examination of overassessments. Reference to this section discloses that it is applicable only to "income war-profits, excess-profits, estate, or gift taxes."

**PART III. ANALYSIS OF CASES REPORTED TO THE JOINT COMMITTEE  
DURING THE CALENDAR YEAR 1938**

**CASES NOT CRITICIZED**

**AMERICAN LIGHT & TRACTION CO., CHICAGO, ILL.**

Overassessments, 1924, 1925, 1927..... \$161, 270

Under date of October 12, 1938, the case of the above-named taxpayer was submitted to the joint committee recommending settlement for the year 1923, which was then pending before the United States Board of Tax Appeals, and the years 1924, 1925, 1927, and 1929 to 1932, inclusive, on the basis of allowing overassessments for the first 4 years and finding deficiencies for the others.

This company is a holding company and was incorporated in 1901 under the laws of the State of New Jersey. Its affiliated subsidiaries are engaged in the production and sale of gas and electricity, the operation of electric traction properties, and the operation of allied facilities.

Additional deductions allowed for depreciation in the years 1923, 1924, 1925, and 1927 cause most of the overassessments disclosed for those years, and a large part of the deficiencies disclosed for the years 1929 to 1932, inclusive, result from the restorations made to the incomes reported for those years on account of the excessive deductions claimed for depreciation. The final determinations with respect to the deductions are in accordance with the provisions of T. D. 4422, XIII-1, C. B. 58.

The reasons and bases for settlement of other issues involved are as follows:

Allowances of additional deductions for taxes caused \$8,138.76 of the overassessments for the years 1924, 1925, and 1927. It was determined that such deductions, as previously determined, were understated. Section 234 (a) (3), Revenue Acts of 1924 and 1926, and the regulations promulgated thereunder.

The amount of \$4,994.28 of the overassessments for the years 1923 and 1925 is caused by the elimination of certain amounts included in the gross income reported in the returns. After investigation it was found that such income was overstated. Sections 233 (a), Revenue Acts of 1921 and 1926.

Additional deduction for a loss sustained upon the sale of certain securities is responsible for \$3,153.99 of the overassessment for the year 1925. This deduction was understated in the prior audit. Sections 204 and 231 (a) (4), Revenue Act of 1926; G. C. M. 11676 (C. B. XII-4, 75 (1933)).

The amount of \$2,970.02 of the overassessment for the year 1923 results from the allowance of an additional deduction for interest

since such deduction was erroneously understated in the return filed. Section 234 (a) (2), Revenue Act of 1921.

The remission of interest assessed on previously asserted deficiencies is responsible for \$7,154.84 for the year 1924.

AMERICAN SECURITIES INVESTING CORPORATION, NEW YORK, N. Y.

Overassessment, 1933----- \$329,414.06

The above-indicated overassessment is the result of a settlement recommended by the Appeals Division and approved by the Chief Counsel's committee and the Chief Counsel for the Bureau of Internal Revenue.

The amount of \$294,743.36 of the overassessment represents a portion of deficiencies in tax assessed against this taxpayer in excess of the actual tax liability and the balance, amounting to \$34,670.70, represents a portion of the interest assessed on previously asserted deficiencies.

Two major questions were involved in the settlement and consisted of (1) whether so-called debentures issued by the taxpayer to the holders thereof constituted a deductible item for income tax purposes; and (2) whether an amount paid by the corporation to the debenture holders upon redemption of the debentures, was in fact a premium which constituted an allowable deduction as a business expense item within the meaning of section 23 of the Revenue Act as construed by article 68, regulations 77.

The proposed settlement has the following background: Deficiencies of \$18,666.78 and \$576,056.58, for 1932 and 1933, respectively, were originally assessed against the taxpayer on July 7, 1935. The total deficiencies, plus interest, were paid in March of 1936. These amounts were arrived at by treating debentures issued by the corporation as capital stock; the interest paid on such debentures as dividends, premiums paid in redemption of debentures as payments in redemption of stock; and debenture expense as an organization expense. The taxpayer's reported income was increased accordingly. Consistent with this theory, the Bureau allowed as a deduction not previously taken by the taxpayer, "Interest received on debentures." These debentures were all held by banks, which reported the respective amounts received from the taxpayer as income on the basis that the debentures were bonds and not stock, and it is stated that claims for refund aggregating approximately \$50,000 are pending on behalf of said banks due to the position taken by the Bureau in the deficiency notice in the instant case. Pending hearing of its petition before the Board of Tax Appeals denying the deficiency liability in question, the taxpayer in a letter dated September 17, 1937, submitted the following proposal for settlement:

Treat the interest paid currently on the debentures (amounting to \$350,250 in 1932 and \$1,926,375 in 1933) as interest deductible by the corporation and includible in the income of the banks then owning the debentures, but disallow the deduction by the corporation of the premium paid in 1933 on the retirement of the debentures (amounting to \$1,713,750) and treat this as taxable to the debenture holders. Allow as deductions for the years 1932 and 1933 the amortization of debenture expense amounting to \$3,282.64 and \$14,311, respectively.

This offer, however, representing less than 50 percent of the deficiency, was deemed unacceptable by the technical staff. The

settlement finally proposed was apparently the outgrowth of the above offer and subsequent conferences between the taxpayer and the Government and was admittedly an arbitrary one by which the Government retained \$300,000 of the total deficiency collected and refunded the amount previously indicated. At the same time, a stipulation was entered into that for 1932 no overpayment on the part of the taxpayer existed, the Government thereby retaining the collected deficiency of \$18,666.78 for that year. In addition, the settlement called for the waiving by the banks of their claims for refund of approximately \$50,000.

A careful study of the applicable law and the pertinent cases having a bearing upon the issues involved in this case led to the conclusion that there are no authorities in point directly to sustain either the view of those proposing the refund or those objecting to the settlement. This was particularly true with reference to the issue involving the question of whether or not the debenture should be treated as bonds or stock. In the case of the second question, however, the law seemed to balance the scale substantially in favor of treating the premium paid in redemption of the debentures as a distribution of surplus rather than as a deductible expense or as a loss under section 23 (f) of the Revenue Act of 1932. With respect to the first issue, the views expressed by the Interpretative Division of the Office of General Counsel, that the Government's chances might be weighed as a 50-50 possibility were in line with the conclusions reached by the staff of the joint committee. As partly counterbalancing the weight of authority on the second question in favor of the Government, however, is the apparent obstacle which the Government would encounter from the contention of the taxpayer that article 68, regulations 77, seems to authorize such a deduction without qualification.

ANGLO-CANADIAN MINING & REFINING CO., LTD., COPPER CLIFF,  
ONTARIO, CANADA

Overassessment, 1936----- \$273,375

The overassessment in the amount shown above represents the excess of the tax withheld at the source over the actual tax liability as finally determined.

The income-tax return filed for the year 1936 in the case of this taxpayer disclosed no tax liability. However, a tax was reported on a withholding return, filed by the International Nickel Co., Inc., of New York, N. Y. Such amount was paid to the collector of the second district of New York on June 12, 1937.

Under date of November 18, 1937, a claim was filed for the refund of \$273,375 withheld at the source, based upon the reciprocal tax convention between the United States and Canada which was ratified August 13, 1937, and Treasury Decision 4766 (1937), I. R. B. XVI-42, page 8.

In December 1936 the taxpayer, a foreign corporation, incorporated by letters patent of the Dominion of Canada, not engaged in trade or business within the United States and not having an office or place of business therein, received a net cash dividend from the International Nickel Co., Inc., of New York, N. Y. The amount represented a gross cash dividend receivable less 10 percent tax imposed under the provisions of section 231 (a) of the Revenue Act of 1936, and withheld at the source by the dividend-paying corporation.

On August 13, 1937, a reciprocal tax convention between the United States and Canada was ratified and became effective. Under the terms of the convention, the provisions of which are retroactive to January 1, 1936, the tax at the rate of 10 percent, imposed by section 231 (a) of the Revenue Act of 1936, is reduced to 5 percent with respect to the amount received from sources within the United States as dividends by every foreign corporation not engaged in trade or business within the United States, and not having an office or place of business therein, provided it is organized under the laws of Canada.

Pursuant to the provisions of section 62 of the Revenue Act of 1936, regulations were prescribed in Treasury Decision 4766 to carry into effect the above provisions of the convention. Upon such regulations the taxpayer has based its claim for refund amounting to one-half the tax withheld at the source by the dividend-paying corporation.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY CO., CHICAGO, ILL.

Overassessment, 1924----- \$78,199.25

On May 14, 1938, the Attorney General, by virtue of the authority vested in him by Executive Order No. 6166, accepted the offer made on behalf of the plaintiff to settle the above-entitled case on terms which, according to a computation made by the Bureau of Internal Revenue, will result in a refund of the amount shown above.

This is an action brought in the United States District Court for the District of Kansas to recover \$109,697.29 paid as income taxes for the calendar year 1924.

The taxpayer filed a tentative income return on or about March 15, 1925, and later in that year filed a consolidated return. Claim for refund for \$59,938.90 was filed on February 25, 1929, and a further claim was filed on November 30, 1929, for the recovery of \$109,697.29. Both of these claims were officially rejected on September 12, 1932.

On September 8, 1934, an agreement was entered into, pursuant to the provisions of section 608 (b) (2) of the Revenue Act of 1928, as amended by section 503 of the Revenue Act of 1934, whereby it was agreed that the running of the statutory period of limitation within which to bring suit by the taxpayer for recovery of the taxes alleged to have been overpaid would be suspended from said date to the date of final decision in the cases of *St. Louis Southwestern Railway Co. v. Commissioner*, Docket No. 44172, and *Union Pacific Railroad Co. v. Commissioner*, pending before the Board of Tax Appeals. It was alleged that these cases involved the same issue as that presented in the taxpayer's case.

The *St. Louis Southwestern case* was decided in favor of the taxpayer on June 29, 1935, in an unpublished opinion. On appeal to the Circuit Court of Appeals for the Eighth Circuit, the decision of the Board was affirmed on July 27, 1936 (84 F. (2d) 857). The time for making application for certiorari in this case expired on December 26, 1936.

The *Union Pacific Railroad case* was decided in favor of the taxpayer on April 16, 1935, in 32 B. T. A. 383. On appeal to the Circuit Court of Appeals for the Second Circuit, this decision was affirmed on November 30, 1936 (86 F. (2d) 637). The Solicitor General, on February 17, 1937, decided not to apply for certiorari in this case.

The facts relevant to the issue present in the instant case, briefly, are as follows: The taxpayer during the year 1924 retired from service a large amount of equipment consisting of locomotives, freight-train cars, passenger cars, and work equipment. In reporting these retirements, a loss was taken in its income-tax return computed by deducting from the original cost the entire amount of depreciation which had accrued from date of purchase to date of retirement, plus salvage.

The taxpayer contended that it was in error in deducting the entire amount of depreciation on the equipment and urged that adjustment should have been made for deductible loss on account of equipment retired during 1924 by using a March 1, 1913, value or cost, whichever was greater, as a basic value, and reducing that base only for depreciation "previously allowed" in prior years, plus salvage.

On December 21, 1931, the Department of Justice was advised by the Bureau that the taxpayer had been notified by the Commissioner that its claim for refund involving an additional loss claimed in the retirement of equipment in 1924 had been considered and that, in accordance with the provisions of Solicitor's Memorandum 4249 (1925), IV-2 Cumulative Bulletin 15, depreciation accrued prior to January 1, 1909, should not be taken into consideration in computing the loss. Accordingly, an adjustment was made by deducting depreciation from January 1, 1909, to date of retirement in 1924; resulting in a net loss.

However, upon further consideration of the case, the Commissioner advised the taxpayer on July 22, 1932, that both claims for refund would be rejected for the reason that an audit of the tax return disclosed a tax liability in excess of the amount previously assessed.

On March 20, 1933, a request was made for reopening the claim filed on February 25, 1929. The taxpayer proposed as a basis for adjustment of the claim that an allowance be made for bond discount in accordance with the decision in the case of *Union Pacific Railroad Co. v. Commissioner* (26 B. T. A. 1126), which decision was acquiesced in by the Commissioner. Further correspondence disclosed that it was suggested that the matter of the loss on retired equipment be held in abeyance pending a decision in the case of some other taxpayer on the question involved. On October 11, 1933, the Commissioner by letter agreed to the proposal, with certain reservations, and issued certificates of overassessment for \$12,481.72. Under date of October 16, 1933, the taxpayer agreed to the adjustment which covered all items in dispute, except the loss claimed on retired equipment.

With respect to the merits of the taxpayer's claim, the cases of *Helvering v. St. Louis Southwestern Ry. Co.* (84 F. (2d) 857 (C. C. A. 8th)), and *Commissioner v. Union Pacific Railroad Co.* (86 F. (2d) 637 (C. C. A. 2d)), sustained the allegations of the taxpayer with respect to depreciation accrued prior to January 1, 1909. (See G. C. M. 18611, Internal Revenue Bulletin, vol. XVI, No. 26, June 28, 1937.) The plaintiff was willing to concede in its settlement offer that the cost of equipment retired in 1924 be reduced by depreciation accrued from January 1, 1909, to March 1, 1913. Therefore, with respect to this issue, if it were the only issue involved, there would have been no hesitation in accepting the offer.

However, consideration had to be given to the question as to whether the statute of limitations barred the suit. It appeared that

the claim for refund, forming the basis of this suit, was rejected by the Commissioner of Internal Revenue on September 12, 1932. On September 8, 1934, a formal agreement (Form 907) was signed by the taxpayer and the Commissioner pursuant to section 608 (b) (2) of the Revenue Act of 1928, as amended by section 503 of the Revenue Act of 1934, suspending the 2-year period of limitations for bringing suit for the recovery of the tax alleged to have been overpaid from the aforesaid date until the date of the final decision in the cases of *St. Louis Southwestern Railway Co. v. Commissioner*, supra, and *Union Pacific Railroad Co. v. Commissioner*, supra, then pending before the United States Board of Tax Appeals. As indicated above, these cases were decided by the Board of Tax Appeals in favor of the taxpayer and the decisions were affirmed by the circuit court of appeals, in one case by the Circuit Court of Appeals for the Eighth Circuit on July 27, 1936, and in the other by the Circuit Court of Appeals for the Second Circuit on November 30, 1936.

The instant suit was commenced on or about December 30, 1936, and there was no question but that it was timely instituted if the statute was stayed during the 3-month period within which the Government might have requested certiorari in the above cases.

By the terms of section 3226 of the Revised Statutes, as amended by section 1113 (a) of the Revenue Act of 1926, the period within which the Government consented to be sued commenced at the expiration of 6 months from the date of filing of the claims for refund, where the Commissioner had not acted upon the claim, and continued through the 5-year period following the date of payment and "until 2 years after the disallowance of the part of such claim to which such suit \* \* \* relates." The courts have uniformly held that the matter of compliance with the conditions imposed by section 3226 raises a jurisdictional question rather than one of ordinary limitations. *Arnson v. Murphy* (115 U. S. 579, 584); *Finn v. United States* (125 U. S. 227); *Pacific Mills v. Nichols* (72 F. (2d) 103, 105 (C. C. A. 1st)); *United States v. Chicago Golf Club* (84 F. (2d) 914 (C. C. A. 7th)). Since the requirements are jurisdictional, the courts have pointed out that the representatives of the Government have no power to waive any of the statutory limitations.

The question whether this action was barred depended upon the construction placed upon the "agreement to suspend the running of the statute of limitations" executed by the taxpayer and the Commissioner on September 8, 1934. A similar question was presented in the cases of *Utah-Idaho Sugar Co. v. United States* and *Pink, Superintendent of Insurance of the State of New York v. United States*. In the *Utah-Idaho case* the agreement had reference to a case pending before the United States District Court for the District of Utah. In the *Pink case* the agreement had reference to a case pending in the Circuit Court of Appeals for the Second Circuit. In each case the decision of the district court was adverse to the Government's contention. On July 14, 1937, the Solicitor General authorized that an appeal be taken in the *Utah-Idaho case* to the Circuit Court of Appeals for the Tenth Circuit. On November 23, 1937, the Solicitor General authorized that an appeal be taken in the *Pink case* to the Circuit Court of Appeals for the Second Circuit.

As an original proposition there seemed to be a great deal of force in the contention that the running of the statute of limitations was

suspended until the expiration of the time within which the Government might have applied for certiorari in the cases referred to in the agreement. Under the agreement the limitations period was suspended from the date of the execution of the agreement to the date of final decision in the cases therein named, which were then pending before the Board of Tax Appeals. In section 1005 (a) (2) of the Revenue Act of 1926 it is provided that the decision of the Board of Tax Appeals shall become final upon the expiration of the time allowed for filing a petition for certiorari, if the decision of the Board has been affirmed or the petition for review dismissed by the circuit court of appeals and no petition for certiorari has been duly filed. There was basis for the argument therefore that there was no final decision in the cases referred to until the expiration of the time allowed for filing a petition for certiorari. However, the Chief Counsel, Bureau of Internal Revenue, in a letter dated July 23, 1937, argued that Congress in enacting section 608 (b) (2) of the Revenue Act of 1928 was aware of the distinction between "the date of final decision" and "the date such decision shall become final"; that since Congress did not incorporate the wording of paragraph (2) of section 1005 in the statute relating to the suspension agreement under the 1928 act, there was basis for the conclusion that the narrower meaning was intended. On the other hand, it seemed that since Congress in enacting section 608 intended providing means whereby, in connection with questions of broad application to a great number of cases, one test suit could be brought and the other cases involving the same point held in abeyance, Congress meant to employ the term "final decision" in the sense of conclusiveness. (See S. Rept. No. 960, 75th Cong., 1st sess., pp. 41, 42.) The offer in compromise was submitted in the form of a letter from the taxpayer's general solicitor, dated June 17, 1937. The offer was to settle the case upon the basis of a refund, with interest according to statute, based upon the net income disclosed in the Bureau's final audit letter of September 6, 1933, reduced by the amount of an additional loss on account of equipment retired in 1924. The Chief Counsel, Bureau of Internal Revenue, in a letter dated July 23, 1937, advised that acceptance of the offer would result in an overassessment of \$78,199.25, not including interest. However, the Chief Counsel in that letter recommended rejection of the offer. On August 24, 1937, the Attorney General rejected the offer because of the doubt with respect to the limitations question and the fact that an appeal had been taken in the *Utah-Idaho case* was taken into consideration. However, the taxpayer was not formally advised of the rejection of the offer, since there was a tacit understanding between the taxpayer's counsel and this Department that the matter would remain in status quo pending the decision by the Circuit Court of Appeals for the Tenth Circuit in the *Utah-Idaho case*.

In May 1938 the Circuit Court of Appeals for the Tenth Circuit rendered a decision adverse to the Government with respect to the limitations question in the *Utah-Idaho case*. The decision has not been officially reported but may be found in 384 C. C. H., page 9294.

Following the above decision the Department of Justice reconsidered the offer in the *Atchison case*. It was concluded that in agreements for extension relating to Board of Tax Appeals decisions, as was the case here, taxpayers are in an even more favorable position than in cases involving extensions of the statute upon appeals from district

court cases. It appeared therefore that the taxpayer was reasonably certain to prevail on the limitations question in the *Atchison case*. Accordingly, the Attorney General accepted the offer in compromise on May 14, 1938, upon the condition that the acceptance could be withdrawn in the event that the settlement did not meet with the approval of the Joint Committee on Internal Revenue Taxation, upon submission of the matter to it in accordance with section 710 of the Revenue Act of 1928.

BATES MANUFACTURING CO., AUGUSTA, MAINE

Overassessments, 1917-21----- \$200, 000

On September 21, 1938, the Attorney General, by virtue of the authority vested in him by Executive Order No. 6166, accepted the offer made on behalf of the plaintiff in the above-entitled case to settle upon the basis of a refund of the flat sum of \$200,000.

The instant suit was filed in the District Court of the United States for the District of Massachusetts in March 1929, seeking the recovery of refunds on account of alleged overpayments of income and excess-profits taxes for the years 1917 to 1921, inclusive.

In its petition the plaintiff contended (1) that the Commissioner had not determined sufficient invested capital for the plaintiff for the 5 years in question, inasmuch as the Commissioner had failed to allow sufficient value for plaintiff's properties, and (2) that the Commissioner had failed to allow sufficient depreciation to the plaintiff in the years concerned.

These questions presented by the petition as to invested capital were made the subject of an exhaustive investigation by representatives of the Bureau of Internal Revenue who made a recomputation of the plaintiff's liability for the years in question. The Bureau's recomputation disclosed a net overpayment of taxes for the years in question in the aggregate amount of \$104,761.24. The Bureau computed the proper interest due the plaintiff on this amount of overpayment as \$102,041.76, up to May 1, 1938, making a total refund due, of tax and interest up to that date, of \$206,803.

The answer of the Government to the petition of the plaintiff was filed on May 16, 1929. In the fall of 1932 the Bureau of Internal Revenue discovered, upon inquiry, that the suit had been dismissed for lack of prosecution, on January 2, 1932. Consideration of the case, however, was continued by the Bureau and reports of investigating officers of the Bureau of Internal Revenue continued to be submitted.

On April 9, 1934, the plaintiff filed a motion to restore the case to the docket, stating that plaintiff and the Government agreed that the case might remain on the docket inactive, pending negotiations for settlement thereof. The motion further alleged that consideration of the case by the parties had continued after the case had been ordered dismissed by the court, and that the failure to call the attention of the court to the agreement between the parties was due to the fact that the plaintiff's attorney, a nonresident of Massachusetts, failed to receive notice of the dismissal since that communication had been wrongly addressed by the clerk. The Department of Justice inquired of the Bureau of Internal Revenue whether there was on record any evidence of such an agreement to hold the case inactive. The Bureau

advised, on April 17, 1934, that its files did not disclose such an agreement, that that office had not been advised of such an agreement, but that plaintiff's attorney had stated that the alleged agreement had been made with the special assistant United States attorney.

The rules of the District Court of Massachusetts provided that all cases in which no action had been taken for a period of 2 years should be dismissed for lack of prosecution on the first business day of January each year; and that a case so dismissed might be revived or restored to the docket upon a motion filed on or before the first day of March following. The plaintiff's attorney, of course, realized that his motion was filed long after the time set out under the rules but requested, in view of the unusual circumstances, that his motion should not be opposed. The Department of Justice inquired of the Bureau of Internal Revenue as to its views as to the propriety of acceding to the plaintiff's request. On April 30, 1934, the Bureau replied that under the circumstances it was suggested that no opposition to the motion to reinstate the case should be offered, and that the plaintiff should be permitted to have its day in court upon granting of the motion. The plaintiff's attorney was then advised that the Department of Justice did not feel that it could join in the motion for reinstatement, but that the Department would not oppose the motion, except to call to the attention of the court certain pertinent cases with respect to the question of reinstatement.

On October 15, 1934, the plaintiff filed a petition for leave to file a bill of review, seeking an order vacating the former entry of dismissal in the case. An answer was filed by the Government, admitting the allegations of the bill of review, and alleging that under the rule of the court the plaintiff's counsel was notified of the dismissal of the case. The court allowed the petition for leave to file a bill of review, taking the bill itself under advisement, and gave the parties an opportunity to file briefs.

On May 28, 1935, the court decreed that the judgment of dismissal be vacated and that the case be restored to the docket and reopened for further proceedings.

In September 1935 the plaintiff made an offer to accept a flat sum of \$250,000 in compromise of its case. Conferences were held and as a result the plaintiff withdrew its offer and submitted in lieu thereof an offer to accept \$190,000, without interest, in settlement.

During the pendency of said offer of \$190,000, it was determined by the Department of Justice, upon inquiry, that the original petition in the case had been filed by the plaintiff with the clerk of the district court on March 21, 1929; that a copy was served on the United States attorney on March 25, 1929; that a copy was mailed to the Attorney General on March 25, 1929; and that an affidavit of service and mailing was filed with the clerk on March 28, 1929.

Further consideration of the case disclosed that the plaintiff's claim for refund, which had been filed prior to the institution of the suit, had been rejected by the Commissioner of Internal Revenue on March 22, 1927, when he signed certain schedules of overassessments in favor of the plaintiff for the years concerned. Under the statute the plaintiff had 2 years in which to file suit; that is, the last day on which suit could be instituted was March 22, 1929. It was apparent therefore that the service by the plaintiff on the United States attorney and the Attorney General, and the filing of the affidavit of service and

mailing occurred subsequent to the 2-year period of limitations, and that under sections 5 and 6 of the Tucker Act (U. S. C., title 28, secs. 762, 763) those procedures were part of the requirements for bringing suit against the United States.

Consideration of this question of limitations resulted in the conclusion that the plaintiff's suit was open to dismissal due to failure to comply with the statutory requirements, and that the defects noted in the institution of the suit had not been waived by the Government through the filing of a general denial to the petition on May 16, 1929, since the action had already been barred by that date. As a result of these conclusions, the plaintiff's offer to accept \$190,000 in settlement of the case was rejected.

Thereupon the Government moved to withdraw its answer filed in the case and to substitute a demurrer on the ground that the court was without jurisdiction in view of the plaintiff's failure to comply with the statute.

A motion to dismiss was filed by the Government with the court on May 4, 1937; briefs were filed by the parties upon said motion; and a hearing on said motion was had on May 11, 1937.

On June 18, 1937, the district court entered an opinion (19 F. Supp. 526), allowing the Government's motion to dismiss this suit. Plaintiff appealed to the Circuit Court of Appeals for the First Circuit, and the judgment of the district court was there affirmed (92 F. (2d) 721), certiorari was granted by the Supreme Court, and on March 28, 1938, that Court rendered its decision, reversing the circuit court of appeals and holding that the plaintiff's action was timely filed.

Under date of April 18, 1938, the plaintiff submitted an offer to accept the flat sum of \$200,000, without interest, in settlement of the suit.

As previously stated, the question of the correct amount of plaintiff's invested capital for the years involved had been redetermined by the Bureau of Internal Revenue. Upon the basis of that recomputation the plaintiff was entitled to a refund of the principal amount of \$104,761.24. Interest to September 15, 1938, increased the total amount of the refund to approximately \$208,600. Upon the merits of the case, therefore, the offer undoubtedly was reasonable and favorable to the Government.

The question of the timeliness of the suit having been determined by the Supreme Court, the only matter remaining for consideration in connection with the offer was the propriety of the Court's action in reinstating the case. The Chief Counsel, Bureau of Internal Revenue, expressed no opinion with respect to this question, although he directed the attention of the Department of Justice to the question in a letter in which he stated that so far as the merits of the case were concerned the offer was a reasonable one.

The propriety of the Court's action in reinstating the case long after the conclusion of the term during which the case was dismissed for lack of prosecution was considered by the Department of Justice as open to serious question. On the other hand, it was recognized that the power of the Court to reinstate a case once dismissed, upon a satisfactory showing by the plaintiff, is unquestionably a very broad power and the circumstances surrounding the dismissal of the case may be taken into consideration. However, it appeared that an exhaustive examination of this question was obviated by the fact that

there was no showing whatsoever in the records of the case that the Government took any exception to the Court's order of reinstatement. Furthermore, no appeal was taken by the Government from this order on the ground that the Court lacked jurisdiction to reinstate the case.

Subsequent to the Court's order reinstating the case the Government did withdraw its answer and filed a motion to dismiss on the ground that the suit had not been timely filed. As stated above, the Supreme Court overruled the Government's contention. It appeared, therefore, that at the time the offer in compromise was under consideration in the Department of Justice there was no basis upon which the Government could present a timely appeal from the Court's reinstatement order. The record indicated that the Government certainly did not vigorously oppose the motion for reinstatement and it seemed probable that the Government did not oppose the reinstatement at all, being content to cite pertinent cases on the subject to the Court, without comment. Furthermore, the Government failed to file a brief in opposition to the reinstatement of the case. Under these circumstances the Department of Justice took the view that no question might have been raised as to the propriety of the reinstatement at the time the offer was submitted.

In view of the fact that the only defense of the Government was technical and of very doubtful validity, the Attorney General accepted the offer in compromise on September 1, 1938, upon the condition that the acceptance could be withdrawn in the event of objection to the settlement by the Joint Committee on Internal Revenue Taxation.

ESTATE OF MARY LILY (FLAGLER) BINGHAM, NEW YORK, N. Y.

Overassessments, 1934-36..... \$101,757.10

The principal cause of the overassessments in the amount of \$96,-766.40 is due to the allowance of additional deductions for contributions made within the taxable years.

It appears that the trustees under the will of the above-named taxpayer filed income-tax returns for the years mentioned, the principal income of the trust consisting of interest and dividends. In the return for the year 1934 there was deducted an amount of \$75,000 representing a contribution to the University of North Carolina under the terms of the decedent's will. The payment of this amount was not claimed in the return for 1936 since the deduction had been disallowed for 1934, prior to the time for filing the 1936 return. The reason for the disallowance of the deduction was that no authority was found in the will directing that the contribution be paid out of income of the trust rather than out of corpus. Following the disallowance, a deficiency in tax was assessed. The trustees subsequently filed claims for refund for the years 1934 and 1936, in which they contended that under the decision of the Supreme Court in the case of *Old Colony Trust Co., Trustee, v. Commissioner* ((1937) 301 U. S. 379), the annual contribution was properly allowable as a deduction for each of the years.

The Supreme Court in the above-cited case found that there was nothing in the regulations or practice of the Treasury Department or in the general purpose of the statute which requires that the words "pursuant to" as used in section 162 (a), Revenue Act of 1928, which is the same as section 162 (a), Revenue Acts of 1934 and 1936, be

construed to mean directed or definitely enjoined by the will or deed creating the trust. The Court also held that it is not necessary affirmatively to show that charitable contributions by a trust estate were actually paid out of income received during the year in which they were made, in order that they may be allowed as deductions.

In view of the above-cited decision the deductions taken for annual contributions are unquestionably allowable.

The balance of the overassessments amounting to \$4,990.70 for the year 1934 represents interest assessed on asserted deficiency referred to above.

MARIE BREMER TRUST, ST. PAUL, MINN.

Overassessment, 1936----- \$95, 848

The income of the above-mentioned trust or so much thereof as was desired, was to be paid to a beneficiary during a life term. During the year 1936 it received a reported net income upon which the tax was assessed and paid.

Although none of the income of the trust was paid to the beneficiary during the taxable year 1936, it was, under the terms of the trust instrument, distributable currently to the beneficiary and was therefore deducted from gross income of the trust. Section 162 (b), Revenue Act of 1936; Lelia W. Stokes (1933) 28 B. T. A. 1245. This resulted in the determination of the overassessment indicated above.

The beneficiary has agreed to the assessment against him of a deficiency for the year 1936, and the trustees have requested that the overpayment by the trust be applied as a credit against the deficiency due from the beneficiary.

ESTATE OF RICHARD T. CRANE, JR., CHICAGO, ILL.

Overassessment, 1931----- \$82, 179. 99

An overassessment of estate tax in favor of the above-named taxpayer was determined in the amount shown due to the allowance of additional deductions for executors' commissions, attorneys' fees, and miscellaneous administration expenses under the provisions of section 303 (a) (1) of the Revenue Act of 1926.

In support of the present claim the executors filed a certified copy of the accounts as approved by the probate court and an affidavit setting forth additional administration expenses. Verification of the account supporting the claim that the court has approved the payment for executors' commissions and attorneys' fees in the administration of the estate has been made.

CUMBERLAND COUNTY POWER & LIGHT CO., PORTLAND, MAINE

Overassessment, 1926----- \$81, 185. 65

The amount of \$73,067.09 of the overassessment is caused by the allowance of additional deductions for unamortized bond discount and premiums paid on the retirement of certain bonds. It was determined that such deductions were understated in the return filed. Section 234 (a) (1), Revenue Act of 1926, and the regulations promulgated thereunder. T. D. 4603 (C. B. XIV-2, 58 (1935)).

The balance of the overassessment amounting to \$8,118.56 results from the allowance of additional deductions for ordinary and necessary business expenses, interest, and taxes. Investigation disclosed that such deductions were erroneously understated in the return. Section 234 (a) (1), (2), and (3), Revenue Act of 1926.

C. J. DEVINE & CO., INC., NEW YORK, N. Y.

Overassessments, 1934; 1936----- \$80,626.56

This taxpayer was incorporated on June 1, 1933, under the laws of the State of New York for the purpose of specializing as dealers in United States Government and municipal bonds. On March 9, 1938, the taxpayer filed claims for refund for the years 1934 and 1936 in the respective amounts of \$65,871.84 and \$20,133.54. The principal issue covered by the taxpayer's claims was that either the cost of securities sold short during 1934 and 1936 or ordinary and necessary business expenses for said years should be increased. During both years the taxpayer frequently sold United States Government securities "short," making subsequent purchases to cover said short sales. In determining the taxable net income reported certain costs incident to said short sales, and consisting of amounts paid or accrued on securities borrowed for the period of said short sales, were inadvertently used to reduce its taxable and nontaxable income.

The issues covered by the claims for refund were investigated by a revenue agent who reported that the lender of the bond, for the purpose of making the short sale, was credited on the books of this taxpayer with an amount equivalent to the rate of interest on the bond borrowed from the date the same was borrowed to the date it was returned, less the amount secured on the next coupon to be paid. This amount credited to the lender was offset on the books of the taxpayer as a reduction of the interest received or receivable income on the taxpayer's long securities. The latter charge resulted in the reflection on the return of reduced taxable and nontaxable income to the taxpayer. As this credit to the lender of the bond was not a reduction of the interest received by the taxpayer but a cost of consummating the short sales, the total of such amounts paid to lenders on closed short sales within the taxable year should have been used to increase the cost of securities sold short.

In (1923) I. T. 1764, II-2, C. B. 187, it was held that an amount which the taxpayer was required to pay to the lender of the short stock to cover dividends payable on the stock in 1922 should be added to the cost of the stock when repurchased, proportionately to each share, to determine the gain or loss then realized. These rulings were sustained in *Gladys G. Terball et al.* ((1933) 29 B. T. A. 44, affirmed without opinion (C. C. A. 2d, 1934), 71 Fed. (2d) 1017). In *Dart et al.* ((1935) 74 Fed. (2d) 845) the Fourth Circuit reversed ((1933) 29 B. T. A. 125) and held that such amounts paid by persons engaged in the business of buying and selling securities are deductible as ordinary and necessary business expenses. On either basis it appears that the incomes reported by the instant taxpayer for the years 1934 and 1936 were overstated by the amounts claimed.

In the claim for refund for 1934 the taxpayer included in its gross profits from sales a net profit from the sale of Treasury bills under the

provisions of article 23 (b) (4)-4, regulations 86, any gain from the sale of said bills is entirely exempt from Federal income taxes.

For the year 1934 a reduction for interest applicable to loans to carry United States securities not wholly exempt was claimed in the return. In schedule L, item 13 (h), of the return it was disclosed that an amount representing interest on loans to carry wholly exempt United States securities was not claimed as a deduction. In its claims the taxpayer states that the unallowable deduction was erroneously determined and excessive which claim was been substantiated upon investigation.

The 1934 claim for refund also covers an additional deduction for capital stock tax accrued for the fiscal year ended June 30, 1935. The 1936 claim for refund covers additional deductions for 1934-36 franchise tax paid to the State of New York, contributions and additional capital stock tax paid for the fiscal year ended June 30, 1937. These issues were found to be allowable under the provisions of law, regulations, and rulings applicable thereto. A small amount of the over-assessments is due to the remission of interest assessed on a previously asserted deficiency.

WILLIAM H. DONNER, PHILADELPHIA, PA.

Overassessment, 1933----- \$229,894.84

The taxpayer owned 4,800 shares of the common stock of the Penn Pitt Coal & Coke Co. and during the year 1933 received a stock dividend of 4,800 shares of the 5 percent prior preferred stock of the corporation with a par value of \$480,000. In a prior determination the amount of \$480,000 was held to be taxable income in accordance with the memorandum opinion of the Board of Tax Appeals in the case of Annie M. Pfeiffer, which was later reversed by the Circuit Court of Appeals, Second Circuit ((1937) 88 Fed. (2d) 3).

Under date of July 7, 1937, the taxpayer filed a claim for refund for 1933, in which it was contended that the dividend was a stock dividend and not taxable under the provisions of the Revenue Act of 1932, and the decisions in the cases of *Cowran v. Commissioner* ((C. C. A. 7th, 1937) 87 Fed. (2d) 125), rehearing denied January 17, 1938 (58 S. Ct. 478), and *Pfeiffer v. Commissioner*, supra. In the present determination the contention of the taxpayer has been conceded and the stock dividend amounting to \$480,000 has been eliminated from the ordinary net income originally determined. The elimination of the stock dividend causes the entire overassessment.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., BOSTON, MASS.

Overassessments, 1932-34----- \$204,123.77

The taxpayer is the domestic branch of a British insurance corporation organized under the laws of Great Britain, doing business in the United States and having a principal place of business in Boston, Mass.

Three questions were involved in the adjustments causing the overassessments, as follows: (1) Whether the taxpayer was entitled to additional deductions for home office expenses, (2) home office taxes, and (3) additional depreciation on furniture and fixtures in its various offices in the United States.

In filing its income tax returns for the years 1932 and 1933, the taxpayer did not claim any deductions for home office expenses and taxes for the reason that it was impossible to secure the necessary information from the home office before the dates for filing of the United States income tax returns. In determining the deficiencies from which appeals were taken for the years 1932 and 1933 (Docket Nos. 80121 and 84654), the Commissioner did not allow any deductions for home office expenses and taxes because the information in respect thereto had not been furnished prior to the dates of mailing of the deficiency notices. The deficiencies for the years 1932 and 1933 result primarily from the disallowance of depreciation claimed.

In filing its income tax return for the year 1934 the taxpayer claimed as a deduction an estimated amount of \$450,000 for home office expenses and taxes. It later filed an amended return purporting to set forth the exact amounts allowable but the method of computation used was not correct. In determining the deficiency from which the appeal is taken in Docket No. 89548 the Commissioner allowed deductions for home office expenses in the amount of \$344,361.82, and for home office taxes in the amount of \$90,473.84. The computation in Docket No. 89548 was filed on June 21, 1937, and claimed deductions for home office expenses of \$344,361 and home office taxes in the amount of \$355,105. Claim for refund was also filed on March 15, 1938.

The difference between the amount allowed for 1934 home office taxes by the Commissioner and that claimed by the taxpayer is principally attributable to the fact that the Commissioner reduced the amount of taxes paid by the home office to the British Government by the amount of £57,235, representing the British tax recovered on dividend distributions, and the fact that the Commissioner had given no effect to the payment by the home office of £1,246 under schedule A of the British Income Tax Act of 1918. The tax as paid under schedule A represents tax on the rental value of property in England.

The taxpayer is unquestionably entitled to deductions for the properly allocable portions of its home office expenses and tax under sections 204 (d), 232 and 119 of the Revenue Acts of 1932 and 1934, and articles 1111 and 680 of regulations 77 and articles 231-1 and 119-10 of regulations 86. The decision of the Supreme Court on January 10, 1938, in the case of *Biddle v. Commissioner* (58 S. Ct. 379), has settled the question as to whether taxes withheld by a British corporation on dividend distributions are taxes of the corporation or the stockholder.

The deductions for head office expenses are computed in accordance with G. C. M. 7592, C. B. IX-1, page 213, and the decision of the Board of Tax Appeals in *London and Lancashire Insurance Co., Ltd.* ((1936) 34 B. T. A. 295). The deduction for head office taxes has been computed in accordance with S. M. 5363, C. B. V-1, page 89; G. C. M. 3179, C. B. VII-1, page 240, as amended by G. C. M. 6953, C. B. VIII-2, page 198; and affect has been given to the decisions of the Board in *Columbian Carbon Co.* ((1932) 25 B. T. A. 465), as to the date of accrual of British income taxes, and the decision of the Supreme Court in *Biddle v. Commissioner*, above referred to.

The depreciation on furniture and fixtures allowed in the deficiency notices represent 5 percent on capital additions for 1924 and subsequent years. The taxpayer offered to settle the cases for these years

by waiving its claims of additional depreciation, its claims for deductions on account of British taxes paid by the home office under Schedule A of the British Income Tax Act of 1918, and further waiving its claim for additional taxes of the home office as represented by British taxes on interest withheld at the source as above set forth, if the Commissioner would allow the additional deductions for home office expenses and taxes. It is upon these determinations that the overassessments were allowed.

FOX FILM CORPORATION, NEW YORK, N. Y.

Overassessment, 1930----- \$140,000

The overassessment represents the excess of the tax assessed on the basis of a tentative return filed by the taxpayer over the actual tax liability as finally determined. The principal adjustments producing the overassessment may be ascribed to amortization or depreciation of silent and dialogue picture costs. The costs of the dialogue pictures released during 1929 and 1930 were amortized on the basis of the rentals received therefrom during the years 1929 to 1932, inclusive. It appeared that the taxpayer was in financial difficulties during the year 1930 and was controlled by a syndicate. The syndicate found it necessary to declare dividends for the year 1930 and as a result the book income for that year was greatly overstated, especially in the matter of unamortized picture costs which were shown on the books at far greater values than the correct amounts. The taxpayer paid dividends in 1930, which probably accounts for its failure to charge off sufficient amortization of picture costs. The deduction for amortization or depreciation is considered proper under the provisions of section 23 (k), Revenue Act of 1928.

ESTATE OF T. H. GIVEN, PITTSBURGH, PA.

Overassessment, 1935----- \$96,193.75

The taxpayer is a trust estate created under the will of T. H. Given who died on June 28, 1919. In the income-tax return filed for the year 1935 the taxpayer reported a net income of \$230,062.50, representing the amount of dividends received on certain capital stocks of various corporations and not distributed by trustees, and a tax liability of \$96,193.75. The provisions of the will of the deceased in regard to the property placed in trust provided that the trustee pay the income to one Annie Given Kerr, sister of the testator, during her natural life. After her death, the trustee was directed to convert the corpus of the trust and pay over to two remaindermen in the amounts equal to four-tenths and six-tenths, respectively. The will further directed that any income accruing after the death of the life beneficiary should be paid to the remaindermen in the same proportions as directed with respect to the corpus.

The life beneficiary died December 6, 1934. The surviving trustee filed a final report with the court which was approved and a decree of distribution entered disposing of the corpus and undistributed income. On July 3, 1935, the executors of the estate of the life beneficiary filed exceptions in which it claimed the dividends in question accrued to the life beneficiary's estate on the theory that

most of the dividends had accrued at the date of the life beneficiary's death, even though they were not declared and paid until after her death.

The trustee claimed that the entire amount of dividends of \$230,062.50 belonged to the remaindermen and asked the court for permission to distribute the corpus and dividends to the remaindermen.

The court held that the death of the life beneficiary terminated the trust and gave to the remaindermen a present right of enjoyment of the corpus.

In the present determination the remaindermen, who actually receive the income, are being taxed for the amounts received. The refund of taxes is proposed to the trust estate in the amount of \$96,193.75 which is to be offset by the total deficiency proposed against the remaindermen of \$88,310.02. The result is a net over-assessment of \$7,883.73.

MR. AND MRS. ZELIK JOSEFOWITZ, ZURICH, SWITZERLAND

Overassessments, 1935, 1936----- \$425, 176. 86

The taxpayers are nonresident aliens and conducted through agents numerous financial transactions in the United States. On February 18, 1936, the United States Secret Service seized gold pieces from a safe-deposit box in New York belonging to Zelik Josefowitz, for violation of the Gold Embargo Act of 1933. A check was made to determine if income-tax returns had been filed, and when it was ascertained that none had been filed, jeopardy assessments were made on February 20, 1936, for 1935 and the period January 1 to February 19, 1936, in an aggregate amount of \$425,176.86, based entirely upon gross bank deposits. After the jeopardy assessments had been made and liens filed on bank accounts and other property located in the United States, a detailed examination was made by revenue agents of all known transactions of the taxpayers for the years 1924 to 1935, inclusive, and the period ended February 19, 1936.

On July 6, 1936, an agent for the taxpayers filed income-tax returns for the year 1935 and period ended February 19, 1936. Investigation disclosed that there was no tax liability for 1935; also that the payment made pursuant to the assessment for 1936 was excessive by \$9,064.35. Therefore, there were overassessments in the respective years of \$416,086.64 and \$9,064.35.

Investigation of the revenue agents for the years 1929 to 1934, inclusive, also disclosed deficiencies in tax and 25 percent penalty due from the taxpayers. The overpayments for 1935 and period in 1936 will be credited to the extent necessary to effect payment of the deficiencies for the prior years.

ALBERT D. LASKER, LAKE FOREST, ILL.

Overassessments, 1932, 1935----- \$221, 559. 02

The principal cause of the overassessments in the amount of \$115,-317.01 results from the allowance of an additional deduction for debts ascertained to be worthless and charged off within the taxable year. It was determined that such deduction was erroneously understated

in the return filed. Section 23 (k), Revenue Act of 1934, and the regulations promulgated thereunder.

The amount of \$60,117.78 of the overassessments was caused by elimination of a certain amount included in the gross income as capital gain. Investigation discloses that such amount constitutes income of another taxpayer and was included in the taxable income of such other taxpayer. Sections 22 (a) and 101, Revenue Act of 1932.

The allowance of a deduction for losses sustained on a certain asset which became worthless during the year caused \$39,886.29 of the overassessments. It was found that such deduction, which was disallowed in a prior audit, was properly allowable in the determination of taxable net income for the year 1932. Sections 23 (e), 111 and 113, Revenue Act of 1932.

The balance of the overassessments amounting to \$15,312.94 represents a portion of the interest assessed on a previously asserted deficiency.

MRS. MADGE BIRD LLOYD, CHICAGO, ILL.

Overassessments, 1934-36..... \$120,491.92

Of the overassessments, \$120,333.49 is due to the elimination from taxable income of certain amounts reported in the separate returns filed by this taxpayer for the above years. It was determined that such amounts constituted income of another taxpayer and were included in the taxable income of such other taxpayer. Sections 22 (a), Revenue Acts of 1934 and 1936, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$158.43 represents the remission of interest assessed on previously asserted deficiencies for the years 1934 and 1935.

MOHAWK HUDSON POWER CORPORATION

Overassessments, 1926-28..... \$310,151.34

The amount of \$310,123.30 of the overassessments is caused by the allowance of additional deductions for depreciation. It was determined after investigation that the deductions claimed in the returns filed were inadequate and less than the reasonable allowances authorized by section 234 (a) (7), Revenue Act of 1926, and section 23 (k), Revenue Act of 1928.

The balance of the overassessments amounting to \$28.04 for the years 1926 and 1927 represents interest assessed on previously asserted deficiencies.

NEW YORK POWER & LIGHT CORPORATION, ALBANY, N. Y. (FORMERLY,  
ADIRONDACK POWER & LIGHT CORPORATION)

Overassessment, 1926..... \$81,239.32

The taxpayer is engaged in the manufacture and sale of gas and electricity. Under date of March 14, 1930, a deficiency and interest thereon were assessed under the provisions of section 279 (a) of the Revenue Act of 1926, on account of cost of construction of a reservoir, which was held to represent a capital expenditure. It was subse-

quently determined the deficiency assessment had been erroneously made, since it was disclosed that the item had been capitalized by the taxpayer and not claimed as a deduction in the return. Accordingly, a certificate of overassessment to abate the amount of tax and interest was issued.

Also, in the consolidated return filed, a deduction for retirement expense or depreciation was claimed. On September 12, 1930, a claim for refund was filed relative to an additional deduction for depreciation, caused by using an average cost for gas and electric assets for the year and certain classified rates. Since the claim was filed voluminous data have been compiled and filed with the Valuation Division of the Bureau relative to acquisitions of assets by purchase, mergers and consolidations and orders issued by the New York State Public Service Commission relative to this taxpayer's properties. After consideration of these data and making of eliminations from depreciable bases the Valuation Division accepted the depreciable bases disclosed and computed depreciation at composite rates of 3.15 percent and 2.6 percent for the respective properties. This resulted in the allowance of additional deductions for depreciation, and is in conformity with the provisions of T. D. 4422 (1934), C. B. XIII-1, page 58.

NEW YORK POWER & LIGHT CORPORATION, ALBANY, N. Y.

Overassessments, 1927-28 ..... \$148, 569. 21

The overassessments result from allowing deductions for unamortized bond discount, expense, call premiums on bonds of predecessor companies retired, and a statutory net loss.

This corporation was incorporated under the laws of the State of New York October 11, 1927, in accordance with the State Commissioner's Order No. 4308, and on October 16, 1927, there were merged or consolidated into this new corporation six predecessor corporations. Under the New York State statutes the above-named taxpayer became the owner of all the properties and succeeded to all the liabilities of the predecessor corporations by operation of law and not by purchase. Oswego Falls Corporation ((1932), 26 B. T. A. 60, aff'd (1934), 71 Fed. (2d) 673). Therefore, the amounts claimed for unamortized bond discount, expense, and call premiums in connection with the retirement of bonds of the predecessor companies with proceeds received from the sale of a new bond issue, are allowable deductions. Illinois Power & Light Corporation ((1936), 33 B. T. A. 1189, C. B. XV-1, p. 12).

With reference to the loss, it was disclosed that the New York Power & Light Corporation, parent, had a net loss for the period ended December 31, 1927, and a taxable income for the calendar year 1928. After offsetting the taxable income of three subsidiaries for the 1927 period and nontaxable interest and dividends against the parent's loss, a statutory net loss was disclosed. That statutory net loss represented the remaining net loss of the parent and was allowable as a deduction in 1928. Section 117 (b) and (e), Revenue Act of 1928, and articles 652 and 654, regulations 74.

A small amount of the overassessments represents a refund of interest which was assessed and paid in connection with assessed deficiencies.

## NIAGARA, LOCKPORT &amp; ONTARIO POWER CO., BUFFALO, N. Y.

Overassessments, 1926-28..... \$195, 507. 92

The amount of \$188,824.50 of the overassessments is caused by the allowance of additional deductions for depreciation. After investigation and consideration in the Bureau it was determined that the deductions allowed in a prior audit were inadequate and less than the reasonable allowances authorized by section 234 (a) (7), Revenue Act of 1926, and section 23 (k), Revenue Act of 1928, and the regulations promulgated thereunder.

The balance of the overassessments, amounting to \$6,683.42, represents interest assessed on previously asserted deficiencies.

## NORTH VIRGINIA CORPORATION, NEW YORK, N. Y.

Overassessment, 1934..... \$135, 813. 47

The principal cause of the overassessment in the amount of \$134,-177.86 is due to the allowance of additional deductions for amounts used to retire indebtedness. During the year 1934 an additional income tax of \$133,171.50, with interest of \$11,491.28, was assessed and paid for the year 1932 on account of adjusting the gross dividends received and reported from British corporations to net and disallowing a credit claimed for British taxes. The taxpayer filed a claim for refund of the additional income taxes and interest paid for the year 1932; therefore, no deduction was claimed in its 1934 income and excess-profits tax return for the interest, neither was any deduction allowed for the item by the Bureau in determining a deficiency which had been assessed. Since the issue of British taxes involved in this case for various years has been settled by the decisions rendered by the United States Supreme Court in the cases of *Mary Duke Biddle* and *George W. Elkins* ((1938) 58 S. Ct. 379; Ct. D. 1303 (1938) I. R. B., No. 5 at 11), the item of interest is now allowed as a deduction in 1934 under the provisions of article 23 (b)-1, regulations 86. The allowance of the additional deduction for interest causes \$1,580.05 of the overassessment.

The balance of the overassessment, amounting to \$55.56, represents the remission of interest assessed on a previously asserted deficiency.

## A. OVERHOLT &amp; CO., INC., NEW YORK, N. Y.

Overassessments, 1934, 1936..... \$79, 824. 02

The principal issue in this case was whether or not certain floor taxes on liquor imposed by the State of Pennsylvania should be allowed as an accrual for the year 1933, or allowed as deductions for the years paid. The taxpayer claimed the taxes as a deduction in a 1933 consolidated return as an accrual, even though the taxes had not been accrued on the books. The revenue agent recommended the disallowance of accrual basis for the taxes, and contended that the taxes should be allowed only for the years in which paid, even though the taxpayers kept their books on the accrual basis. The action of the revenue agent resulted in the determination of a deficiency for 1933 for the consolidated group, and overassessments for 1934 and 1936 in favor of A. Overholt & Co., Inc.

On November 22, 1933, the Pennsylvania General Assembly passed an act known as the spirituous and vinous floor tax law, which assessed a tax of \$2 per gallon on all liquor stored within the Commonwealth of Pennsylvania from 5:35 p. m. November 22, 1933, to midnight December 5, 1933. The taxpayer estimated the tax due under this law and claimed a deduction for the tax in the consolidated return for 1933, but did not accrue the tax on its books.

The taxpayer instituted an action in the Federal court, western district of Pennsylvania, to contest the constitutionality of the law, but the action was later discontinued upon the signing of a contract by the Pennsylvania Liquor Control Board for the purchase of the same number of gallons of liquor on which the floor tax was assessed, at prices high enough to absorb the floor tax. The contract provided that the liquor was to be purchased and shipped to the liquor control board by December 31, 1934.

On January 11, 1934, the taxpayer sent a letter to the department of revenue, Commonwealth of Pennsylvania, requesting an extension of time for payment of the floor tax to April 10, 1934, with further extensions to December 31, 1934, for any tax remaining unpaid. The taxpayer agreed that if the extension of time for payment was granted, the taxpayer would make no application for refund of any tax paid, and that so long as the liquor control board performed each and every term and condition of the contract for the purchase of the liquor, the taxpayer would continue to pay the tax even though the law might be declared to be unconstitutional. The taxpayer reserved the right to cease payment of the tax and test the constitutionality of the law if the liquor control board failed to perform each and every term of the purchase contract.

On January 19, 1934, the department of revenue granted the requested extension of time for payment and agreed to the terms and conditions as stated in the taxpayer's letter of that date.

The contract with the liquor control board provided for the purchase of liquor, a portion of which to be delivered on or before January 31, 1934, and the remainder to be delivered and accepted in approximately equal monthly quantities during the remaining 11 months of 1934; all deliveries for December 1934 to be made on or before December 14, 1934. The liquor control board failed to carry out the terms of the contract.

During the years 1934, 1935, and 1936, the taxpayer paid floor taxes only on the number of gallons of liquor paid for by the liquor control board. The payment during the year 1935 was claimed as a deduction in the income tax return filed by the taxpayer for 1935, but the payments made during 1934 and 1936 were not claimed as deductions in the returns filed for those years.

In 1936 the Commonwealth of Pennsylvania brought suit for the unpaid portion of floor tax and on March 4, 1938, the Court of Common Pleas of Dauphin County, Pa., held that the spirituous and vinous floor tax law of November 22, 1933, was unconstitutional. The Commonwealth of Pennsylvania appealed the decision of the State supreme court, middle district, and on June 30, 1938, that court affirmed the decision of the lower court.

It follows, therefore, that without a statute in existence under which the floor taxes here in question could have become due, no accrual thereof could arise either in 1933 or any other year, since the

taxes were void ab initio and liability therefor could never arise. (See (1926) S. M. 4683, V-1 Cum. Bull. 59; (1931) I. T. 2578, X-1 Cum. Bull. 119; (1935) I. T. 2934 XIV-2 Cum. Bull. 63; E. L. Bruce Co. (1930), 19 B. T. A. 777, acq., X-1 Cum. Bull. 9.)

Although the floor taxes here in question could not be deducted as taxes in any year, the payments of such taxes made during the years 1934, 1935, and 1936, under the provisions of the contract with the liquor-control board, constituted ordinary and necessary business expenses deductible under section 23 (a), Revenue Acts of 1934 and 1936.

A small portion of the overassessment allowances is caused by the elimination of certain amounts included in the gross income reported in the returns filed since it was determined that such amounts constitute income for prior years and were included in the determination of the taxable net income for such prior years. Section 22 (a), Revenue Acts of 1934 and 1936.

ESTATE OF CHARLES M. PRATT, NEW YORK, N. Y.

Overassessment, 1935----- \$160, 958. 93

This is an overassessment of estate tax and results from the allowance of additional deductions for attorney's fees and miscellaneous administration expenses. It was determined that such deductions were understated in the return filed. Section 303 (a) (1), Revenue Act of 1926, as amended by section 805, Revenue Act of 1932, and section 403, Revenue Act of 1934.

ESTATE OF GEORGE D. PRATT, BROOKLYN, N. Y.

Overassessment, 1935----- \$369, 632. 05

The overassessment of estate tax in the amount of \$281,666.74 results from the allowance of additional deductions for executors' commissions, attorneys' fees, and miscellaneous administration expenses. The provisions of law cited in the preceding case are equally applicable to the instant one.

The balance of the overassessment, amounting to \$87,965.31, is caused by the allowance of additional deductions for bequests to educational and charitable organizations. Investigation disclosed such deductions were understated in the return filed. Section 303 (a) (3), Revenue Act of 1926, as amended by section 807, Revenue Act of 1932, and section 406, Revenue Act of 1934; articles 44 and 45, regulations 80.

SAN JOAQUIN LIGHT & POWER CORPORATION, FRESNO, CALIF.

Overassessments, 1923-26----- \$154, 034. 57

The principal cause of the overassessments in the amount of \$150,517.42 is the allowance of deductions for depreciation of the taxpayer's plant and properties. Deductions allowed for Federal stock taxes and business expense for the years 1924 to 1926, inclusive, constitute in a small measure of the overassessments determined for those years.

The taxpayer was incorporated in 1910 under the laws of California, and began operations in that year. During the taxable years under consideration the corporation did a general lighting and power business throughout the territory in which it operates; distributed gas for Bakersfield, Kern, Merced, and Selma; operated a street railway system in Bakersfield and Kern, and furnished domestic water in Selma and Madera. Since the organization of the company all previously existing property has been interconnected and added to so that the property constitutes a unified system covering 10 principal counties of the San Joaquin Valley. For the taxable years covered by the overassessment the taxpayer filed returns including the Bakersfield and Kern Electric Railway Co., which operates a street railway and the Valley Electric Supply Co. engaged in merchandising electrical supplies. The returns also included nonoperating subsidiaries whose entire capital stock is owned by the taxpayer. The years 1923 to 1925, inclusive, were previously audited on the basis of field examinations, resulting in a small overassessment for the year 1923, allowed on the March schedule, and deficiencies in tax for the other years which, together with interest, were assessed in May of 1928. In 1930 all the taxpayer's common stock was acquired by the Pacific Gas & Electric Co., and by the end of 1932 more than 90 percent of its entire stock, common and preferred, was owned by that company.

Within the time prescribed by statute the taxpayer filed claims for the years indicated, seeking refund of taxes due to the recomputation of depreciation on its properties on the straight-line method instead of the sinking-fund method required by the California Railroad Commission and employed on its books and returns; and the allowance of losses due to abandonments and retirements. In the present determination of tax liability the depreciation deductions for the years involved herein, as well as for all years subsequent thereto, have been determined on the straight-line method in accordance with the recommendations made by the Bureau's valuation engineers following consideration of evidence filed by the taxpayer in substantiation of its claims. The deductions are determined under the provisions of section 234 (a) (7), Revenue Acts of 1921, 1924, and 1926, and the regulations promulgated thereunder; (1934) T. D. 4422, XIII-1 Cum. Bull. 58, and (1936) Mim. 4170 (Rev.) XV-2 Cum. Bull. 148.

ORMOND G. SMITH, NEW YORK, N. Y.

Overassessments, 1930-33 ----- \$141, 512. 29

The amount of \$110,145.49 of the overassessments is caused by the elimination of certain amounts included in the gross income as determined in a prior audit. It was determined that such amounts constitute income of another taxpayer and were included in the taxable year which formed the basis for the assessment of deficiencies in tax against such other taxpayer. Sections 22 (a), Revenue Acts of 1928 and 1932. The facts concerning this adjustment appear as follows:

In 1929, Ormond G. Smith was the owner of 17,500 shares of the capital stock of Street & Smith, Inc. (and seven-sixteenths of the outstanding capital stock of Ormorge Realty Co.). Of the 17,500 shares of stock of Street & Smith, Inc., owned by Smith, 5,835 shares were held by him as trustee of Gerald H. Smith Trust. Certain corpora-

tions, including Street & Smith, Inc., and Ormorge Realty Co., were merged into a new corporation known as Street & Smith Publications, Inc. Smith received seven-sixteenths of the capital stock of Street & Smith Publications, Inc., for his interest in Street & Smith, Inc. and Ormorge Realty Co. On June 14, 1929, a Newfoundland corporation was formed known as the Overland Service Co., Ltd., with a capitalization of 1,000 shares of stock. Smith transferred his interest in the capital stock of Street & Smith Publications, Inc., to the Overland Service Co., Ltd., for 998 shares of its capital stock, the remaining two shares being issued as qualifying shares. On October 15, 1929, a corporation known as Delaware Service Co. was incorporated. A certificate for 997 shares of stock of Overland Service Co., Ltd., was issued to the Delaware Service Co. and the entire capital stock of Delaware Service Co. was issued to Smith. During all the years under consideration dividends were paid by Street & Smith Publications, Inc., to Overland Service Co., Ltd., and Smith would "borrow" the amount of the dividends from the Newfoundland corporation. No income was reported by him from that source.

Upon consideration of the case, the income-tax unit ignored the existence of the Delaware Service Co. and the Overland Service Co., Ltd., and considered that the dividends paid by Street & Smith Publications, Inc., were paid to Ormond G. Smith.

The balance of the overassessments consists of \$865.04 and \$30,-501.76, which were caused by the elimination of amounts erroneously included in gross income as determined in a prior audit and the remission of interest assessed on previously asserted deficiencies, respectively.

SPERRY FLOUR CO., MINNEAPOLIS, MINN.

Overassessment, 1937----- \$223, 278. 16

This taxpayer made reimbursements to its direct customers on account of processing taxes which were not paid by the taxpayer to the Government because of an injunction suit brought in June 1935, and the decision of the Supreme Court of the United States in the case of *U. S. v. Butler* ((1936) 297 U. S. 1), holding the processing taxes to be unconstitutional.

The taxpayer, in its returns for the fiscal years ended May 31, 1935 and 1936, claimed accrued but unpaid processing taxes as deductions. These deductions, however, were subsequently disallowed but allowances were made for the fiscal year ended May 31, 1936, for the actual amounts of processing taxes included in sales in that year and passed on to customers. Deficiencies resulting from the adjustments for processing taxes and other adjustments for the fiscal years ended May 31, 1935 and 1936, were agreed to by the taxpayer and the cases were closed for those years.

Investigation by a revenue agent disclosed a deficiency in tax for the fiscal year ended May 31, 1937. In determining the deficiency no deductions were allowed for processing taxes which were actually refunded to the customers during the fiscal year ended May 31, 1937, or where the taxpayer agreed with the customers in that year to settle or compromise disputed claims with respect to processing taxes. In the final audit the revenue agent's allowance for reimbursements to customers of processing taxes in 1937 as a deduction for the fiscal year

ended May 31, 1936, was reversed, and the amount allowed as a deduction for the fiscal year ended May 31, 1937, under authority of G. C. M. 20134, (1938) Internal Revenue Bulletin No. 22, at 4. Reversal of the adjustment in question resulted in the determination of a deficiency of \$245,373.81 for the fiscal year ended May 31, 1936, which was agreed to by the taxpayer.

A deduction representing expenses incurred by the taxpayer in making reimbursements to its customers on account of processing taxes was allowed. The amounts included in this adjustment were paid out of the joint tenant's fund and, therefore, did not become a charge against operations on the books of the taxpayer. The deduction finally allowed is proper under the provisions of section 23 (a), Revenue Act of 1936.

The taxpayer set up an estimated liability for refunds of processing taxes to bag companies as at May 31, 1936. The amount set up was never paid and the taxpayer transferred the amount to taxable income during the fiscal year ended May 31, 1937. This amount, however, was eliminated from income for the reason that it was not included in determining the income for the fiscal year ended May 31, 1936, in a prior investigation of the return for that year.

Investigation also disclosed that the income reported on the return for the year under consideration was overstated due to the failure of the taxpayer to take into consideration a decrease in deferred credits as at May 31, 1937. Adjustment was therefore made in accordance with section 22 (a), Revenue Act of 1936.

TIMKEN ROLLER BEARING CO., CANTON, OHIO

Overassessment, 1919..... \$75,907.20

The allowance of a deduction for the amortization of the costs of facilities installed or acquired after April 6, 1917, caused \$69,281.80 of the overassessment.

The taxpayer was incorporated in 1904 under the laws of the State of Ohio for the purpose of manufacturing roller bearings, steel tubes, wheel and wagon axles. Prior to the United States entering the World War the taxpayer was furnishing motortruck manufacturers with large taper roller bearings for use in their trucks for shipment abroad. Upon the entry of the United States in the World War demands were made upon the corporation for additional roller bearings for use in the manufacture of Army trucks which necessitated additional expenditures for plant and equipment in order that the needs of the Government for this product could be supplied. The expenditures made were analyzed and verified by field examiners and Bureau engineers and all relevant factors have been considered in determining the amount of the deduction allowable under the provisions of section 234 (a) (8), Revenue Act of 1918, and the regulations promulgated thereunder. Appeal of Manville Jenckes Co. (4 B. T. A. 765).

The balance of the overassessment, amounting to \$8,980.96, results from adjustment of the invested capital to reflect the restoration of the values of certain assets erroneously charged off the books in a prior year. Section 326 (a) (3), Revenue Act of 1918; articles 840 and 841, regulations 45.

## ESTATE OF MARION C. TYLER

Overassessment, 1933----- \$111,365.86

The amount of \$110,471.81 of the overassessment is caused by the elimination of the value of certain property included in the gross gifts reported in the return. It was determined that such property did not constitute a taxable gift under the provisions of sections 501 (c) and 506, Revenue Act of 1932.

It appears that on April 11, 1933, Marion C. Tyler, widow of W. S. Tyler, founder of the W. S. Tyler Co., Cleveland, Ohio, executed an instrument wherein she directed her attorney to turn over 15,000 shares of stock in the above-named company to three trustees to be used to perpetuate said company. In the gift-tax return filed for 1933 the 15,000 shares of the above-mentioned stock were reported at a value of \$1,500,000, or \$100 per share, under the assumption that the entire interest in the stock of Marion C. Tyler, the donor, was divested by the transfer to the trustee.

Subsequent to the filing of the gift-tax return certain residuary legatees under the will of Marion C. Tyler, deceased, instituted suit in the court of common pleas of Cuyahoga County, Ohio (*Lakeside Hospital, et al., v. Procter Patterson, et al.*, No. 455420) wherein it was claimed that the transfer was ineffective to convey the entire interest of the transferor; that the interest not transferred should revert to the transferor's estate; and that by the terms of the transferor's will the remaining trust estate should pass to the plaintiffs (residuary legatees). The court rendered a decision holding that the trust created on April 11, 1933, constituted a valid trust to be exercised only by the three trustees named in the trust instrument, and that the trust would terminate upon the death, resignation, or renewal of a majority of the trustees, whereupon the remaining trust estate would revert to the estate of Marion C. Tyler, deceased. All parties in interest agreed to abide by the court's decision, and under an agreement approved by the court it was agreed that the trust would be terminated by the resignation of the remaining trustees; that the 15,000 shares of stock held by the trustees would be turned over to the executors and trustees of the decedent; and that the said stock would be immediately purchased from them by the W. S. Tyler Co. at \$150 per share or \$2,250,000.

The representatives of the decedent's estate agreed for the purpose of settling the Federal estate-tax liability that the 15,000 shares of stock should be included in the gross estate at the agreed purchase price. At the time of the agreement two of the trustees were living, and determining the amount that charity would receive by reason of the return of the 15,000 shares of stock to the estate, there was calculated pursuant to the decision of the court the value of the reversion to take effect at the end of the year of death of two out of three persons aged respectively 82, 70, and 49. A net deficiency in Federal estate tax was determined and agreed to by the representatives of the estate.

The above-indicated settlement of the Federal estate-tax liability affected the value of the gift includible for gift-tax purposes and necessitated a redetermination of the gift tax of Marion C. Tyler, deceased, for the year 1933 on the basis of a taxable transfer of the said 15,000 shares of stock at \$150 a share with the remainder value of said gift after the death of any two of the three trustees reverting to the estate

of the donor, Marion C. Tyler. In the redetermination of the Federal gift tax for 1933 it was found that the value of the like estates in the gift of 15,000 shares of the stock of the W. S. Tyler Co. at a total value of \$2,250,000 amounted to \$642,712.50. Since the value of the gift of 15,000 shares of stock was reported out of \$1,500,000 and it has been determined that the gift had a value of \$642,712.50, as above indicated, the reported value of the gift was decreased accordingly, resulting in an overassessment of \$110,471.81.

The balance of the overassessment amounting to \$894.05 represents a portion of the interest assessed in connection with the tax shown on the return.

UNION TRUST COMPANY OF PITTSBURGH, AND UNION SAVINGS  
BANK OF PITTSBURGH, PITTSBURGH, PA.

Overassessments, 1932-35 ----- \$332, 133. 42

The above-indicated overassessments are part of a settlement covering the Union Trust Company's taxable years 1930 to 1934, inclusive, the Union Savings Bank's taxable years 1931, 1933, and 1935, and the City Deposit Bank & Trust Co.'s taxable (fiscal) year ended March 31, 1932.

The overassessments result almost entirely from the disallowance by the Commissioner of deductions, reported by the Union Trust Co. in the years 1930 and 1931 and by the Union Savings Bank in the year 1931, for alleged losses sustained on "sales" of certain securities by the Union Trust Co. to its subsidiary, the Union Savings Bank, and by the savings bank to the trust company, which securities were in every instance repurchased by the seller. In the settlement the "sales" were not recognized as bona fide and were treated by the Commissioner as transactions in which "losses" may not be recognized for income tax purposes. Later in the years 1932 to 1935, inclusive, when some of the securities involved in the above-mentioned transactions were actually sold or redeemed, the taxpayers used the "repurchase price" as the base in computing gain or loss and so reported the gain or loss on their income tax returns for those years. If the "sales" in 1930 and 1931 are not recognized as bona fide, it follows that the original cost, rather than the repurchase price, is the correct base for computing gain or loss on the actual sales of the securities in the later years. The above-mentioned overassessments result chiefly from a recomputation for the years 1932 to 1935, inclusive, using the original cost as the basis.

In the settlement the taxpayers agreed to deficiencies totaling \$388,100.64. These deficiencies were caused chiefly by the action of the Commissioner, referred to above, in refusing to recognize as bona fide certain "sales" of securities and in disallowing deductions for "losses" resulting therefrom. The total amount of the deficiencies exceeded the total amount of the overassessments, which were credited against deficiencies by \$55,967.22.

The only concession made by the Government in the deficiency years is the waiving of fraud penalties asserted against the taxpayers pursuant to section 293 (b) of the Revenue Acts of 1928 and 1932. Since the decision of the Board of Tax Appeals in the case of A. W. Mellon ((1937) 36 B. T. A. 977), it has been concluded that the penalties could not be sustained in this case.

## ESTATE OF WILLIAM K. VANDERBILT

Overassessments, 1934-36----- \$79,051.73

The amount of \$78,887.33 of the overassessments result from the allowance of additional deductions representing the amounts of income distributed to legatees. On February 19, 1895, William K. Vanderbilt established a trust under an agreement to provide income for the education and maintenance of his children and the support of his former wife, Alva H. Vanderbilt (later Belmont). The trust was to provide an income of \$300,000 per year, any excess income to be repaid to the grantor and any deficiency to be made up by the grantor.

Pursuant to the terms of the agreement, part of the corpus was transferred to Consuelo, Harold S., and William K. Vanderbilt, 2d, and at the time of death of Mrs. Alva H. Vanderbilt Belmont on January 26, 1933, the trustees were paying her \$100,000.

Under the terms of the agreement, the principal was to revert to the grantor on the death of Alva H. Vanderbilt Belmont.

The grantor died July 22, 1920; under his will, the residuary estate was to be distributed equally to his two sons, Harold S. and William K. Vanderbilt, and the major part of the residuary estate was distributed by the end of 1925.

The net income of the trust of Alva H. Belmont for the years under consideration was transferred to the executors of the estate of William K. Vanderbilt and was included in the income-tax returns filed by the executors for the estate.

As the result of field investigations of the taxpayer's income tax liability, it was determined that the entire income be eliminated from the returns of the taxpayer and taxed to Harold S. and William K. Vanderbilt, pursuant to the provisions of section 162 (c) of the Revenue Acts of 1934 and 1936.

The distribution of the income of the trust to the estate and then to the residuary legatees was construed as being a decision made at the end of each year to distribute the income annually. The trust instrument did not provide for the accumulation of income for the benefit of the estate. The decedent's will provided for the distribution of the income to the residuary legatees.

The balance of the overassessment amounting to \$164.40 for the year 1934 represents interest assessed on a previously asserted deficiency.

## FRITZ VON OPEL, ZURICH, SWITZERLAND

Overassessment, 1931----- \$692,054.15

The above-indicated overassessment is the result of a settlement recommended by the Appeals Division of the Bureau and approved by the General Counsel's Committee. The amount shown above represents an overpayment of tax in the amount of \$369,108.11, a fraud penalty of \$243,536.81, and interest of \$79,409.23.

The facts in the case may be summarized as follows:

In November 1928, General Motors Corporation made a deal in Germany with Wilhelm Von Opel and Dr. Fritz Von Opel, the father and uncle of the above-named taxpayer, who were the then owners of a copartnership operating under the name of Adam Opel, whereby General Motors Corporation was to pay to the partners 135,000,000

marks for the physical assets and goodwill of the partnership. Of this amount, 80,000,000 marks represented the amount to be paid for the physical assets and 55,000,000 marks the amount to be paid for the goodwill. The Adam Opel partnership was at that time the leading manufacturer of automobiles in Germany. The partnership had been organized in 1867 or thereabouts, and it was owned entirely by the father and uncle of Fritz Von Opel.

The General Motors Corporation, however, did not want to purchase the automobile business in the form of a partnership. Therefore, negotiations were begun and arrangements made whereby the partners transferred the business of the partnership to a new corporation organized under the laws of the German Reich named Adam Opel Aktien Gesellschaft. In exchange for the partnership property the partners obtained the stock of the new corporation.

On April 3, 1929, General Motors Corporation took over 80 percent of the stock of this corporation and the price paid therefor was at the rate of 135,000,000 marks for 100 percent of the stock. The remaining 20 percent of the stock not taken over by General Motors was held, 10 percent (600 shares) by each of the two brothers. At the time this transaction was effected a separate option agreement was entered into with each of the former partners whereby General Motors was entitled to call upon either or both at any time before April 1, 1934, to deliver their 600 shares at a certain price and, likewise, each partner was entitled under the option to call upon General Motors at any time prior to this date to purchase the shares at specified prices (the price increasing each year).

In 1931 Wilhelm Von Opel gave his 600 shares to his son, Fritz Von Opel, as a gift and executed a power of attorney to his son which would enable him to exercise the option above mentioned. During that year, Fritz Von Opel came to New York and exercised the option, receiving for the 600 shares \$3,737,748.64. With a part of the proceeds he purchased 47,625 shares of General Motors Corporation stock and resold a portion of these shares later in the same year. He reported on his income-tax return for the year 1931 the profit on the sale of General Motors Corporation stock and the dividends received thereon, but did not report the profit from the sale of the 600 shares of Adam Opel A. G. to General Motors Corporation, nor did he mention the transaction in his income-tax return.

It was not until after the statute of limitations for the assessment of additional tax had expired that the Commissioner's agents learned of the sale of the 600 shares. Accordingly, on November 30, 1935, a deficiency notice was mailed to Fritz Von Opel in which the entire sale price was included as taxable income subject to capital-gain rates. A fraud penalty was also assessed at this time.

Subsequent to the sale in October 1931 of the 600 shares of Adam Opel A. G. to General Motors Corporation, Fritz Von Opel transferred a part of the proceeds of the sale (about \$1,250,000) to a corporation in which he is one of the principal stockholders by the name of Uebersee Finanz Korporation, A. G. This corporation was organized and is existing under the laws of the Confederation of Switzerland. With this money the corporation on February 27, 1933, purchased \$1,250,000 face value of United States gold coin. The gold was placed in the custody of Ladenburg Thalman & Co., 25 Broad Street, New York City, for the account of Uebersee Finanz

Korporation. When the Gold Act went into effect, the gold coin which had been purchased by Uebersee Finanz Korporation, A. G., and in custody of the above-named company, was pursuant to an order of the Secretary of the Treasury dated May 4, 1936, delivered to the Federal Reserve Bank of New York for the account of the Treasurer of the United States. A jeopardy assessment was made against Fritz Von Opel in 1935, for failure to report the profit realized on the sale of stock above mentioned and a second jeopardy assessment in the same amount was made against Uebersee Finanz Korporation, A. G., as transferee of Fritz Von Opel and a lien placed on the gold. Under the settlement of the gold controversy it was agreed by Uebersee Finanz Korporation, A. G., that out of said sum retained the Government might withhold an amount sufficient to cover the taxes claimed to be due from Fritz Von Opel.

From the above-stated facts the principal questions to be resolved were (1) what amount of profit did Fritz Von Opel derive on the sale of shares of Adam Opel to General Motors Corporation for \$3,737,748.64; and (2) did the taxpayer file a false and fraudulent income-tax return for 1931 by his failure to report the profit made on the sale of stock in this country?

In determining the amount of taxable profit derived from the sale of the shares it is obvious that the taxpayer is entitled to deduct from the sale price a substantial cost or basis. Under the circumstances, however, it was practically impossible to accurately determine such cost or basis. From the very nature of the tangible assets shown on the balance sheet of the Opel partnership at September 30, 1928, as well as from a comparison with earlier balance sheets, it was clear that all the tangible assets owned by the partnership at September 30, 1928, were acquired subsequent to March 1, 1913, except a small portion of the real estate and buildings. The March 1, 1913, value of the tangible assets was, therefore, of little concern since practically all of the tangible assets owned at September 30, 1928, were acquired after March 1, 1913, and must be valued at cost.

The taxpayer claimed that, due to the partnership's very conservative accounting practice, the figures of which tangible assets were carried on the balance sheet at September 30, 1928, were very much lower than the true cost of the assets actually owned. This understatement, so the taxpayer explained, was due (1) to the fact that the partnership greatly understated the value of its assets in the opening balance sheet at January 1, 1924, in which all tangible assets were supposed to have been valued in terms of the new German gold mark; (2) to the fact that the partnership made a practice of charging to expenses nearly all asset items which should have been carried as small tools and supplies inventories; (3) to the fact that the partnership charged off too great an amount of depreciation; and (4) to the fact that the amount carried on the books as a reserve for bad debts was in reality a surplus reserve.

Several proposals were made by the taxpayer for the settlement of this case which were all refused. However, in the early part of 1937 the taxpayer brought in a new computation which he contended should be accepted as the maximum deficiency to which the Government would have been entitled had the statute of limitations not run. The amount of the deficiency under this computation was \$116,160.51, and with that figure as a starting point the taxpayer's attorney indi-

cated a willingness to settle the case, this being the concession he expected the Government to make because of the fact that nothing could be collected in the absence of proof of fraud.

The taxpayer's attorney was informed that, although the Government did not agree that the \$116,160.51 was the full deficiency, the Government would, nevertheless, be willing to recommend that the case be closed on the basis of a deficiency in tax of that amount and no penalty.

The taxpayer agreed to close the case for a deficiency of \$116,000 plus interest from June 15, 1932, to October 22, 1936, the difference between said deficiency, plus interest, and \$859,740.12 to be refunded with interest from October 22, 1936, to the date of repayment.

This settlement meant that the Government would retain \$82,305.87 of the \$859,740.12 and would return \$777,434.25 to the taxpayer.

With reference to question 2 involved in this case, the burden of proving fraud was upon the Government and the fact was that the Government had no evidence of fraud except such as could be drawn from instances arising from the fact that the taxpayer failed to mention the transaction in his tax return. Such evidence, it must be admitted, was far from being clear and convincing.

The taxpayer's explanation that the omission of the transaction from his return was due entirely to ignorance of the fine technicalities of our income-tax laws and not due to fraudulent intent not only sounded reasonable but was actually rather convincing. Mr. Von Opel stated that, as a nonresident alien, he had no knowledge of the fact that, under technical income-tax rules, a profit derived from the sale of stock of a foreign corporation made pursuant to the exercise of an option was construed to be taxable as income from sources within the United States if the option was exercised within the United States, and was construed to be nontaxable if the option was exercised outside the United States. Had he been aware of any such fine technicality he could have legally avoided the tax by exercising the option in Germany.

The reasonableness of the taxpayer's explanation as to why he failed to report a profit on the sale readily demonstrates the difficulty which would be encountered in any attempt to establish fraud.

In the settlement of this case the taxpayer agreed to waive the plea of statute of limitations. The Government in turn agreed to waive the fraud penalty.

WASHBURN CROSBY CO., INC., 323 FOURTH AVENUE, SOUTH, MINNEAPOLIS, MINN.

Overassessment, 1937----- \$403, 860. 85

The taxpayer made reimbursements to its direct customers on account of processing taxes which were not paid by the taxpayer to the Government because of an injunction suit brought in June, 1935, and the decision of the Supreme Court of the United States in the case of *United States v. Butler* ((1936) 297 U. S. 1), holding the processing taxes to be unconstitutional.

The taxpayer in its returns for the fiscal years ended May 31, 1935 and 1936, claimed accrued but unpaid processing taxes as deductions. Upon investigation of the returns, the revenue agent disallowed these deductions and allowed in lieu thereof processing taxes included in

sales and passed on to customers during the fiscal years ended May 31, 1935 and 1936. Deficiencies resulting from the adjustments for processing taxes, and other adjustments made by the revenue agent for the fiscal years ended May 31, 1935 and 1936, were agreed to by the taxpayer and the cases were closed for those years.

Investigation by the revenue agent disclosed an overassessment for the fiscal year ended May 31, 1937. The agent in determining this overassessment allowed no deductions for processing taxes which were actually refunded to the customers during the fiscal year ended May 31, 1937, or where the taxpayer agreed with the customers in that year to settle or compromise disputed claims with respect to processing taxes. In the present determination the revenue agent's allowances for reimbursements to customers of 1935 and 1936 processing taxes in 1937 as deductions for the fiscal years ended May 31, 1935 and 1936, have been reversed and the amounts allowed as deductions for the fiscal year ended May 31, 1937, under authority of G. C. M. 20134 ((1938) Int. Rev. Bull. No. 22, at 4). Reversal of the adjustments in question resulted in the determination of additional deficiencies for the fiscal years ended May 31, 1935 and 1936, which have been agreed to by the taxpayer.

The taxpayer in determining net income reported on the return filed for the fiscal year ended May 31, 1937, restored approximately \$75,000 to book income on account of increase in reserve for contingencies. Upon investigation of the return this amount was eliminated from the gross income reported for the reason that the amounts included in this adjustment had been determined to be proper additions to income for the fiscal years ended May 31, 1935 and 1936, and had been included in determining taxable income for such years in a prior investigation.

Allowance of a deduction representing expenses incurred by the taxpayer in making reimbursements to its customers on account of processing taxes was made. The amounts included in this adjustment were paid out of the joint tenant's fund and, therefore, did not become a charge against operations on the books of the taxpayer. The deduction now allowed is proper under the provisions of section 23 (a), Revenue Act of 1936.

An assumed liability for refunds of processing taxes to bag companies as of May 31, 1936, was originally set up by the taxpayer. The amount was never paid to the bag companies and the taxpayer transferred the amount to taxable income during the fiscal year ended May 31, 1937. This amount was eliminated from income for the reason that it was included in determining income for the fiscal year ended May 31, 1936, in a prior investigation of the return for that year.

Other adjustments of minor importance consist of the understatement of capital-stock taxes paid and interest on additional Federal income taxes.

WASHBURN CROSBY CO., INC., 200 CHAMBER OF COMMERCE, MINNEAPOLIS,  
MINN.

Overassessment, 1937----- \$242,558.42

The adjustments causing the overassessment indicated above are due to reimbursements to customers on account of processing taxes included in sales, processing tax refund expense, capital-stock tax

adjustments, adjustments for excess reimbursements of processing taxes and bad debts. Inasmuch as these causes of overassessment are the same as those in the preceding case and the explanation of each is equally applicable to the instant case, they will not be repeated.

### CASES CRITICIZED

#### A. ATWATER KENT, PHILADELPHIA, PA.

Overassessment, 1929----- \$112, 818. 90

The above refund resulted from a settlement effected in the office of the Chief Counsel for the Bureau of Internal Revenue with regard to a contested deficiency in tax originally assessed against the company for the year 1929 in the amount of \$869,292.67. The deficiency settlement affected the amount of the refund in allowing to the corporation a deduction for an amount paid as a royalty to Mr. Atwater Kent, the owner of the A. Atwater Kent Corporation. If the entire royalty has been disallowed, it would have been treated in Mr. Kent's individual return as a dividend and subject to surtax but not to normal tax. While this would have increased the refund to Mr. Kent, it would have subjected the Atwater Kent Corporation to a larger tax. By allowing a deduction to the corporation of royalties in the amount of \$1,285,866.39, the net tax considering the deficiency and the overassessment together amounted to \$399,805.16. This resulted in a reduction in favor of the taxpayer in the amount of \$116,097.68.

The staff would have preferred to have the case litigated because of the close relationship between Atwater Kent and his solely owned corporation. There was some doubt as to whether the equitable title to the patents upon which the royalties were paid was not in the corporation instead of Mr. Kent. There was also some question as to whether the Atwater Kent Corporation did not have at least a shop-right in the patents, which might materially lessen the value of the rights assigned by Atwater Kent to the corporation and consequently affect the allowance for royalty payments. Some question also arose as to the value of the patents.

The staff of the joint committee advised the Treasury Department under date of August 5, 1938, that it was unable to conclude from the record that the settlement was a good one from the standpoint of the Government. However, the legal and factual considerations were of such a nature, that it would be difficult to predict the outcome if the case were litigated. Therefore, the case was returned to the Treasury Department to proceed with such disposition as it deemed advisable. The Treasury eventually decided to make payment of the refund.

CONSOLIDATED GAS CO. OF NEW YORK AND SUBSIDIARIES, NEW YORK,  
N. Y.

Overassessments, 1918-22; 1925, 1928----- \$465, 293. 51

The above-named case was reported to the joint committee under date of November 28, 1938. The staff of the committee took exception to allowances proposed to the New York & Queens Electric Light & Power Co., referred to by the Bureau as a subsidiary. The case

has been withheld by the Bureau pending consideration of the criticisms offered. Discussion, therefore, will be deferred pending final disposition thereof.

INTERNATIONAL BUSINESS MACHINES CORPORATION, NEW YORK, N. Y.

Overassessments, 1928-30, 1932----- \$85,077.24

Under date of June 3, 1938, the above-entitled case was duly reported to the joint committee covering the years indicated. The overassessments for the years 1928, 1929, and 1930 were to settle suits in the Court of Claims (Nos. 43744, 43745, and 43746) that were described as filed merely to protect against the running of the statute of limitations. The overassessment for 1932 was not in suit. It was also proposed to close the returns of this taxpayer for the years 1931, 1933, and 1934. These were years in which deficiencies were assessed.

The staff of the Joint Committee on Internal Revenue Taxation criticized two of the adjustments:

(1) The allowance of the credit for foreign taxes with respect to British dividends and royalties.

(2) The timeliness of a claim for refund filed for the year 1932.

After criticism was offered by the staff to two issues and reconsideration by the Bureau resulted in substantiation of both, the Bureau raised other issues, which would have increased the amount of the overassessments by approximately \$20,000. The Bureau, therefore, concluded:

After fully considering the matter, and having in mind particularly the fact that the representatives of the Bureau and the taxpayer had agreed to a settlement which computed a net overassessment of \$19,005.05, with interest, in lieu of an overassessment of \$39,269.27 set forth in the redetermination; that the settlement originally agreed upon was reached on a give-and-take proposition; that the settlement was directed by the Department of Justice; and that failure to consummate such a settlement would open up many collateral issues to the disadvantage of the Government, it is believed the best interests of the Government will be served by consummation of the original agreement.

In view of this statement no further objections were offered to the settlement by the staff, the opinion being that they had fully performed the duties imposed upon them by calling to the attention of the Bureau the erroneous tax determinations. Apparently, for the reasons given in the preceding quoted statement of the Bureau, the case was settled on the basis of the original agreement under date of March 27, 1939.

INTERNATIONAL MATCH CORPORATION, NEW YORK, N. Y.

Overassessments, 1929-31----- \$1,951,275.50

This case was transmitted to the committee on June 23, 1938. Since the case is still pending in the Bureau, the résumé covering the overassessments involved will not be made until final action is taken.