

REFUNDS AND CREDITS OF INTERNAL
REVENUE TAXES, 1935

REPORT

OF

THE JOINT COMMITTEE ON INTERNAL
REVENUE TAXATION

PURSUANT TO SECTION 710 OF THE
REVENUE ACT OF 1928

AND

REPORT OF THE STAFF OF THE JOINT
COMMITTEE TO THE COMMITTEE



JUNE 13, 1938.—Referred to the Committee on Ways and Means
and ordered to be printed, with illustrations

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1938

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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G. D. CHESTEEN, *Assistant Chief*

COLIN F. STAM, *Counsel*

LETTER OF TRANSMITTAL

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, June 13, 1938.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: Pursuant to section 710 of the Revenue Act of 1928, I have the honor to submit a report by the Joint Committee on Internal Revenue Taxation, dated June 10, 1938, covering refunds and credits of internal revenue taxes for the calendar year 1935.

Very respectfully,

PAT HARRISON, *Chairman.*

REPORT OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

(Pursuant to the Revenue Act of 1928)

WASHINGTON, D. C., *June 13, 1938.*

Section 710 of the Revenue Act of 1928 requires that all refunds and credits in excess of \$75,000 shall be reported to the Joint Committee on Internal Revenue Taxation by the Commissioner of Internal Revenue. This section also requires an annual report to the Congress of such refunds and credits, including the names of all persons to whom amounts are credited or payments made, together with the amounts credited or paid to each.

Pursuant to the above provision of law, the joint committee has caused its staff to examine all such refunds and credits made by the Commissioner during the calendar year 1935 and to submit a report thereon to the committee. This is the eighth report made under the Revenue Act of 1928. The first report was submitted on June 8, 1929, and covered the period June 1 to December 31, 1928. The second report was made on June 20, 1930, and embraced the calendar year 1929. The third report was made on January 12, 1932, and covered the calendar year 1930. The fourth report was made on January 28, 1933, and covered the calendar year 1931. The fifth report was made March 9, 1934, and covered the calendar year 1932. The sixth report was made on March 22, 1935, and covered the calendar year 1933. The seventh report was made on April 1, 1937, and covered the calendar year 1934.

A complete copy of the report for the calendar year 1935 is attached hereto. Part I of this report contains a list 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 submits this list and states that it agrees 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 part II and part III of the staff report. These parts cover an analysis and general survey of overassessments. The committee does not specifically approve or disapprove of part II and part III of the report. The Treasury Department has prepared an analysis of the overassessments reported to the joint committee and this has been included as a supplement to part II.

Respectfully,

PAT HARRISON, *Chairman.*

LETTER OF SUBMITTAL

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON INTERNAL REVENUE TAXATION,
Washington, June 13, 1938.

HON. PAT HARRISON,
Chairman, Joint Committee on Internal Revenue Taxation,
Washington, D. C.

MY DEAR MR. CHAIRMAN: There is submitted herewith a report on refunds and credits of internal-revenue taxes in excess of \$75,000, as required by section 710 of the Revenue Act of 1928.

The report covers the calendar year 1935 and may be summarized as follows:

1. The total overassessments, including interest, in excess of the \$75,000 limit, for the calendar year 1935 amount to \$17,972,754.87. This is slightly in excess of the amount of such overassessments, including interest, for the calendar year 1934, which amounted to \$16,258,240.68.

2. Taken as a whole, the final determinations of the Commissioner in these cases have been carefully and accurately made and are not open to serious criticism. In disposing of a few of the old cases which have been pending for years, differences of opinion have inevitably arisen, but the Department has cooperated in every way by making a review of all the issues raised. Two cases have been withheld from settlement pending further review.

Respectfully submitted.

L. H. PARKER, *Chief of Staff.*

REPORT ON REFUNDS AND CREDITS OF INTERNAL REVENUE TAXES, 1935

FOREWORD

This report has been prepared in accordance with the requirements of section 710 of the Revenue Act of 1928, which provides as follows:

SEC. 710. Refunds and credits to be referred 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 after the enactment of this Act, 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 of Internal Revenue is submitted to the Joint Committee on Internal Revenue Taxation. 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 conformity with the above provision, on June 19, 1929, a report was submitted to the Congress, entitled, "Refunds and Credits of Internal Revenue Taxes" (H. Doc. 43, 71st Cong., 1st sess.). This report covered a 7-month period from May 29, 1928, the effective date of the provision, to December 31, 1928, the end of the calendar year. There was also included in this report in part IV an analysis of the refunds made and reported to the committee under the authority of the urgent deficiency bill (H. R. 16462) which covered the 14-month period February 28, 1927, to April 24, 1928. The second report on refunds and credits was made by the joint committee to Congress on June 20, 1930. This report (H. Doc. 478, 71st Cong., 2d sess.) covered all refunds and credits in excess of \$75,000 reported to the joint committee by the Commissioner during the calendar year 1929. The third report (H. Doc. 223, 72d Cong., 1st sess.) was made on January 12, 1932, and covered all cases reported for the calendar year 1930. The fourth report pertaining to these allowances was made on January 30, 1933 (H. Doc. 535, 72d Cong., 2d sess.) and covered all overassessments reported during the calendar year 1931. The fifth report on refunds and credits was made on March 9, 1934 (H. Doc. 279, 73d Cong., 2d sess.) and included all cases for the calendar year 1932. The sixth report comprising these allowances was made on March 22, 1935. This report (H. Doc. 145, 74th Cong., 1st sess.) included all refunds and credits in excess of \$75,000 reported to the joint committee by the Commissioner during the calendar year 1933. The seventh report on refunds and credits was made by the joint committee to the Congress on April 1, 1937, and included all cases reported in the calendar year 1934 (H. Doc. 188, 75th Cong., 1st sess.). The report now submitted constitutes the eighth report and embraces the refunds and credits in excess of \$75,000 reported by the Commissioner to the joint committee during the calendar year 1935.

The general purposes of the Congress in enacting this legislation were analyzed in the previous reports above referred to and need not be repeated here. It will suffice to say that there has been no change in the policy of the committee since the publication of the first report.

This report is divided into three parts:

Part I consists of a list of refunds and credits in excess of \$75,000 allowed in the calendar year 1935, which list is required to be reported to the Congress under section 710 of the Revenue Act of 1928.

Part II contains an analysis of overassessments. This analysis shows the total amounts of the overassessments and the principal causes for their allowance. There is also contained in part II a brief résumé of each case, alphabetically arranged. An analysis of these overassessments has also been prepared by the Treasury Department and is included as a supplement to part II.

Part III consists of a general survey of the overassessment situation.

The most important facts and conclusions which will be presented may be summarized as follows:

1. The total overassessments, including interest, allowed during the calendar year 1935 in cases involving refunds and credits over \$75,000 amounted to \$17,972,754.87. Of this amount, however, \$3,356,243.40 represents allowances made on cases previously reported in other years which were withheld and allowed during the calendar year 1935. The total net overassessments allowed for cases reported during the calendar year 1935, including interest, amounts to \$14,616,511.47.

2. A comparison of the overassessments for 1935 with 1934 discloses a slight increase in the allowances made. The total amount of overassessments, including interest, in 1934 was \$16,258,240.68, and in 1935, \$17,972,754.87—an increase of \$1,714,514.19, or approximately 10½ percent. While the overassessments for 1935 show an increase over 1934, the allowances are less than for any period in which overassessments in excess of \$75,000 have been reported to the joint committee prior to 1934. A summary comparison also indicates that approximately 80 percent of the tax originally and additionally assessed was ultimately collected.

3. The amount of cash, exclusive of interest, returned to taxpayers during 1935 on refund claims amounted to \$2,314,495. Of this amount, \$2,042,136.41 represents allowances for cases reported to the committee in 1935 and the balance is for overassessments that were reported in previous years and withheld, which were allowed during this year. The decrease in cash refunds for the year covered by this report is approximately 42 percent in comparison with 1934, when cash refunds amounted to \$3,556,657.17.

4. The interest allowed on overassessments for 1935 totaled \$3,281,235.09. Only \$1,103,676.88 of this amount, however, represented cash actually returned to the various taxpayers, since \$2,177,558.21 was credited, or offset, against taxes due in other years. The average percentage of interest allowed on these overassessments was approximately 29 percent. In 1934 the average percentage of interest allowed was about 33 percent.

5. The principal causes of the overassessments reported to the committee during 1935 are as follows:

	<i>Percent</i>
Depreciation.....	38
Inventory adjustments.....	13
Amortization.....	11
Order of United States Board of Tax Appeals.....	10
Invested capital.....	7

The reasons for the above-stated causes of overassessments are fully discussed in part III of this report, entitled "General Survey of Overassessments."

6. Of the overassessments reported for the calendar year 1935, \$8,860,697.52, or 78 percent, represents the refundment of taxes for the excess-profits tax years 1917 to 1921, inclusive. The interest on these overassessments totals \$2,375,178.01. The overassessments attributable to the excess-profits tax years reported during 1934 totaled \$2,124,061.60 and comprised 35 percent of the allowances for that year. The increment in amount involving the excess-profits tax years may be ascribed principally to the settlement of a large case covering those years.

7. During the calendar year 1935, 22 cases were reported to the committee. Serious differences of opinion arose between the Bureau and the staff of the committee in only five cases. These cases were made the subject of special investigations and it was ultimately decided that three should be allowed. The two remaining cases, one involving \$87,393.23 and the other, \$75,829.62, were withheld from settlement pending further review.

PART I

LIST OF CREDITS AND REFUNDS OF OVER \$75,000 EACH FOR THE CALENDAR YEAR 1935

[As required by section 710, Revenue Act of 1928]

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation by the Commissioner of Internal Revenue, under the provisions of section 710 of the Revenue Act of 1928

JANUARY 1935

Name and address of taxpayer	Years involved	Abate-ments	Credits	Refunds	Original and additional assessments	Net overas- sessments allowed	Previously allowed	Final tax collected	Interest	Percent tax re- duction
Brymann, Eugene, estate of, New York 1	1932	\$32,629.86	\$106,709.01	-----	\$141,044.07	\$139,338.87	-----	\$1,705.20	\$7,106.89	98.79
Hudson Motor Car Co., Detroit, Mich. 2	1927, 1929	-----	120,985.39	-----	3,623,785.16	120,985.39	\$5,114.18	3,497,685.59	35,051.60	3.48
Total.....	-----	32,629.86	227,694.40	-----	3,764,829.23	260,324.26	5,114.18	3,499,390.79	42,158.49	-----

FEBRUARY 1935

Gaus Steamship Line, New York.....	1920	-----	-----	\$125,000.00	\$281,871.77	\$125,000.00	\$220.92	\$156,650.85	\$102,256.84	44.38
Peavy-Hynes Lumber Co., Shreveport, La. 3	1919	\$71,078.68	\$65,835.05	-----	357,037.22	136,913.73	-----	154,749.33	36,996.48	38.35
Standard Oil Co. of California, San Francisco, Calif. 4	1916-19 5	-----	7,848,318.80	-----	32,295,913.28	7,848,318.80	-----	24,447,594.48	2,077,967.82	24.30
Total.....	-----	71,078.68	7,914,153.85	125,000.00	32,934,822.27	8,110,232.53	220.92	24,758,994.66	2,217,221.14	-----

MARCH 1935 (NO CASES REPORTED)

APRIL 1935

Allen Property Custodian, trust No. 2483 (Waldemar Leopold von Bredow), Wash- ington, D. C.	1920-26	-----	\$1,596.10	\$75,908.02	\$121,931.41	\$117,201.22	-----	\$4,730.19	-----	96.12
Dallas Ry. & Terminal Co., Dallas, Tex. 6	1927-31	-----	-----	153,686.34	208,962.99	153,686.34	-----	47,041.75	\$42,709.83	73.55
Metropolitan Life Insurance Co., New York, N. Y. 7	1924-26	-----	448,754.74	582,285.98	7,372,242.09	1,031,040.72	-----	5,431,603.94	557,684.80	13.99
Total.....	-----	39,697.10	450,350.84	811,880.34	7,703,136.49	1,301,928.28	-----	5,483,375.88	600,344.63	-----

MAY 1935

Brooks, Peter C., trust No. 1905, Boston, Mass.	1928-29	\$45,494.74	\$51,284.61	\$287,936.25	\$96,779.35	\$171,156.90	\$23,208.67	36.12
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JUNE 1935

Whitmore, Harris, estate of, Waterbury, Conn.	1927		\$91,142.19	\$648,680.78	\$91,142.19	\$557,538.59	\$24,820.71	14.05
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JULY 1935

Pittsburgh & Lake Erie R. R. Co., New York, N. Y. ¹	1918-19	\$492,521.41		\$2,234,113.00	\$492,521.41	\$18,400.21	\$1,419,951.53	22.87
The United States branch of the Employers Liability Assurance Corporation, Ltd., Boston, Mass.	1926-27		\$189,808.98	328,407.72	189,808.98	380.00	138,218.74	57.91
Total.....		492,521.41	189,808.98	2,562,520.72	682,330.39	18,780.21	1,558,170.27	-----

AUGUST 1935 (NO CASES REPORTED)

SEPTEMBER 1935

Anderson, Clayton & Co., Houston, Tex. ⁹ (for William L. Clayton, Benjamin Clayton, and Monroe D. Anderson, surviving partners)	1918		\$107,955.52	\$300,459.59	\$107,955.52	\$126,176.68	\$26,282.01	77.92
Baker, Emerit F., estate of, Kewanee, Ill.	1929		95,835.74	132,384.41	95,835.74		36,548.67	72.39
Roberts, Henry, estate of, Hartford, Conn.	1929		154,890.16	311,306.47	154,890.16	74,912.40	81,503.91	78.82
South Penn Oil Co., Pittsburgh, Pa. ¹⁰	1929							-----
Total.....			358,681.42	744,150.47	358,681.42	201,089.08	138,335.49	55,227.43

¹ Interest credited to taxable year 1931.
² Interest in the amount of \$22,516.16 credited to taxable year 1928.
³ Interest credited; withheld in connection with appeal covering 1917-18, \$65,374.16.
⁴ Interest credited to taxable years 1924, 1926, 1927, 1928, and 1929.
⁵ Inclusive.
⁶ Barred by statute of limitations, \$8,234.90.
⁷ Withheld in connection with proposed deficiencies for 1930 to 1932, inclusive, \$909,597.43.
⁸ Barred by statute of limitations; \$6,465.49; withheld in connection with proposed deficiencies for 1927 and 1928, \$56,674.20; charged to Director General of Railroads, \$240,100.16; interest credited to taxable year 1929.
⁹ Withheld in connection with proposed deficiencies for 1930-32, \$46,044.48.
¹⁰ Entire overassessment withheld pending supplemental report.

Refunds and credits reported to the Joint Committee on Internal Revenue Taxation by the Commissioner of Internal Revenue, under the provisions of section 710 of the Revenue Act of 1928—Continued

OCTOBER 1935 (NO CASES REPORTED)

NOVEMBER 1935

Name and address of taxpayer	Years involved	Abate-ments	Credits	Refunds	Original and additional assessments	Net overas- sessments allowed	Previously allowed	Final tax collected	Interest	Percent tax re- duction
Hartford, Henrietta (Mrs.) ¹¹ , George H. Hart- ford, second trust, Jersey City, N. J.	1932									
Keystone Watch Case Corporation, Philadel- phia, Pa. ¹²	1928, 1929		\$5,214.82	\$186,687.54	\$224,565.28	\$191,902.36		\$32,662.92	\$52,565.68	85.46
Lackawanna Steel Co. and subsidiaries, Lacka- wanna, N. Y. ¹³	1918		14,304.27	126,657.83	8,475,299.37	149,962.10		7,974,079.84	126,351.29	1.66
Total.....			19,519.09	313,345.37	8,699,834.65	332,864.46		8,006,742.76	178,916.97	

DECEMBER 1935

Guggenheim, Daniel, estate of, New York 14.	1929									
Standard Oil Co. of New York and subsidiaries, New York 15.	1922-25 ¹⁶									
The United States branch of the Employers' Liability Assurance Corporation, Ltd., Bos- ton, Mass.....	1929-31 ¹⁶		\$100,993.50	\$100,993.50	\$578,186.27	\$100,993.50		\$477,192.77	\$25,420.43	17.47
Total.....			100,993.50	100,993.50	578,186.27	100,993.50		477,192.77	25,420.43	

¹¹ Inclusive.

¹² Comptroller General has suspended full amount of credit pending receipt of record evidence showing allowance is not barred by statute of limitations.

¹³ Interest in the amount of \$1,365.28 credited to 1933.

¹⁴ Withheld for adjustment in connection with appealed deficiencies for the years 1929 and 1930, \$360,227.43.

¹⁵ Entire overassessment withheld from settlement pending further investigation.

¹⁶ Entire overassessment withheld for adjustment in connection with deficiencies for 1920, 1923, 1926, 1927, and 1928.

Date reported	Name	Interest	Cause of delay of settlement
September 1928	Park M		Tax liability increased by amount withheld.
October 1928	New N	\$107,294.98	Withheld in connection with proposed deficiencies for 1929 to 1932, inclusive.
February 1929	Star C	108.89	Readjustment of interest.
August 1929	Car		The amount of \$203.47 shown as withheld in refund report of 1929 has been offset against an erroneous allowance for 1917.
November 1929	Pitt a	85.75	Readjustment of interest.
May 1930	Atla ph	4,029.63	Do.
November 1930	St. St	45.44	Withheld by Comptroller General for direct settlement.
May 1931	Pitt bu	4,170.07	Do.
June 1931	Oxf	14,946.22	Readjustment of interest.
July 1931	Fan tic	1,443.75	Use of an incorrect due date of a tax to which a portion of the overassessment was credited.
October 1931	Sim	903.36	Readjustment of interest.
November 1931	Y Chic Cl	240,315.82	Withheld in connection with proposed deficiencies for 1927, 1928, and 1929.
March 1932	Rea	568.93	Additional interest allowance resulting from reversal of a credit to a refund adjustment.
Do	Inge	1,826.55	Readjustment of interest.
September 1932	Cub su		Interest in the amount of \$4,803.04 allowed in 1932, subsequently recovered and amount credited to tax liability for fiscal year Sept. 30, 1920.
January 1933	Chil	239,781.77	Withheld in connection with proposed deficiency against Anaconda Copper Mining Co.
July 1933	Ban	94,046.00	Withheld in connection with proposed deficiency for 1931.
August 1933	Ass C	124.38	Entire overassessment withheld in connection with proposed deficiencies for 1923-24 and 1928-30.
September 1933	Go Al	36,235.33	Withheld in connection with proposed deficiencies for 1924-26 and 1929, 1930.
Do	Play	572.64	Withheld in connection with proposed deficiency for 1930.
December 1933	Am	12,610.30	Withheld in connection with proposed deficiencies for 1927 to 1929, inclusive.
Do	Mc Sa	13,584.84	Withheld in connection with deficiencies against the husband for 1928 and 1929.
August 1934	The an ab	913.48	Readjustment of interest.
November 1934	New R.	33,854.35	Withheld in connection with proposed deficiencies for 1920 and 1922.
December 1934	The M	42,981.91	Withheld in connection with proposed deficiency for 1931.
		1,150,447.39	

¹ Withheld in connection with proposed deficiencies.

² Barred by statute.

NOTE.—Information

PART II

ANALYSIS OF OVERASSESSMENTS, TOTALS AND PRINCIPAL CAUSES,
FOLLOWED BY A BRIEF RÉSUMÉ OF EACH CASE, ALPHABETICALLY
ARRANGED*Statistical summary, classification and analysis of overassessments, followed by a
brief résumé of each case, alphabetically arranged*OVERASSESSMENT CASES FOR THE PERIOD JAN. 1 TO DEC. 31, 1935, INCLUSIVE (TOTAL
CASES REPORTED, 22)

Original and additional assessments.....		\$57,904,097.13
Less: Final tax liability.....		44,650,898.11
		<hr/>
Gross overassessments.....		13,253,199.02
Previously allowed.....	\$225,204.39	
Charged to Director General of Railroads.....	240,100.16	
Barred by the statute of limitations.....	14,700.39	
Withheld in connection with proposed deficiencies.....	1,437,917.70	
		<hr/>
		1,917,922.64
		<hr/>
Net overassessments for cases reported during the calendar year 1935.....		11,335,276.38
		<hr/>
Composed of—		
Refunds.....	\$2,042,136.41	
Credits.....	9,149,734.33	
Abatements.....	143,405.64	
		<hr/>
		11,335,276.38
Interest paid on overassessments reported during the calendar year 1935.....		3,281,235.09
		<hr/>
Total of overassessments and interest.....		14,616,511.47
Add:		
Overassessments previously reported and withheld, allowed during 1935.....		2,205,796.01
Interest on overassessments previously reported and withheld, allowed during 1935.....		1,150,447.39
		<hr/>
Grand total of overassessments and interest.....		17,972,754.87
Reduction in assessed tax by overassessments reported (percent).....		19.58
Average percentage of interest paid on overassessments.....		28.95

NOTE.—Above summary represents 18 cases, since figures are not included for 1 case which has been withheld pending further investigation, 1 case which has been suspended by the Comptroller General pending receipt of record evidence showing allowance is not barred by the statute of limitations, 1 case the allowance for which is being withheld in connection with proposed deficiencies for other years, and 1 case withheld pending a supplemental report.

Classification of overassessments

Principal cause	Amount	Percent of total
Depreciation.....	\$4,317,998.01	37.69
Inventory adjustments.....	1,459,159.30	12.74
Amortization.....	1,308,201.36	11.42
Order of United States Board of Tax Appeals.....	1,193,864.91	10.42
Invested capital.....	855,048.03	7.46
Taxes.....	376,595.83	3.29
Estate tax.....	246,032.35	2.15
Dividends received from domestic corporations.....	182,799.22	1.60
Affiliation.....	177,547.73	1.55
Loss on sale of securities.....	139,361.05	1.23
Change in method of reporting income.....	111,141.04	.98
Loss on sale of capital assets.....	93,241.35	.81
Guaranty period settlements (railroads).....	46,106.88	.41
Remission of interest assessed on deficiencies.....	30,579.83	.27
Depletion.....	21,416.68	.19
Miscellaneous.....	898,231.17	7.68
Total overassessments.....	11,457,324.74	100.00
Withheld to meet possible deficiencies.....	122,048.36	-----
Net overassessments allowed for cases reported during the calendar year 1935.....	11,335,276.38	-----

ANALYSIS

The foregoing data are representative of 18 cases, in which the original and additional assessments aggregated \$57,904,097.13. The total tax collected from these assessments amounted to \$44,650,898.11, leaving overassessments of \$13,253,199.02. Of this amount, however, \$225,204.39 was previously allowed; \$240,100.16 was charged to the Director General of Railroads; \$14,700.39 was barred from payment under the statute of limitations; and \$1,437,917.70 is withheld for adjustment in connection with proposed deficiencies for other years, resulting in net overassessments for cases reported during the calendar year 1935 of \$11,335,276.38.

The total refunds shown in detail in part I amount to \$2,042,136.41; the total credits amount to \$9,149,734.33; and the total abatements in connection with the same cases amount to \$143,405.64. The total of these three items represents the net overassessments allowed in all cases in excess of \$75,000 which were reported to the joint committee during the calendar year 1935. On these overassessments, the sum of \$3,281,235.09 was allowed in interest, making net overassessments and interest of \$14,616,511.47.

In order to obtain the grand total of all overassessments and interest allowed during 1935, it is necessary to add to the total reported overassessments shown above, overassessments of \$2,205,796.01 and interest of \$1,150,447.39 on cases previously reported in other years and withheld which were allowed during the year 1935. The grand total of overassessments and interest allowed during 1935, therefore, amount to \$17,972,754.87.

RÉSUMÉ OF CASES, ALPHABETICALLY ARRANGED

ALIEN PROPERTY CUSTODIAN, TRUST NO. 2483, (WALDEMAR LEOPOLD VON BREDOW), WASHINGTON, D. C.

Overassessments, 1920 to 1926, inclusive..... \$117,201.22

The taxpayer is a nonresident alien and no income-tax returns were filed by or for him for the years 1920 to 1924, inclusive. The Union Trust Co. of Washington, D. C., filed a return for the taxpayer for

the year 1925 showing no tax due, and a return for 1926 showing a small tax liability. A deputy collector prepared returns under the provisions of section 3176 of the Revised Statutes for the other years involved. The taxes indicated were duly paid by the Alien Property Custodian, and claims for refund were filed. The basis of these allowances is determined as follows:

The amount of \$99,851.57 of the overassessments was caused by the elimination of certain amounts included in the gross income as dividends received from domestic corporations. It was determined that such amounts were overstated in a prior audit and the allowances of such amounts are properly made under the provisions of sections 201 and 213 (a), of the Revenue Acts of 1918, 1921, 1924, and 1926, and the regulations promulgated thereunder.

Of the overassessments, \$17,271.54 results from a redetermination of the profit realized upon the sale of certain securities. Investigation discloses that the basis used for computing gain or loss in a prior audit was understated, resulting in an overstatement of the taxable income. Sections 202 and 213 (a), Revenue Act of 1921, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$78.11 is caused by the allowance of an additional deduction for interest, such deduction being understated in a prior audit. Section 214 (a) (2), Revenue Act of 1924; article 121, regulations 65.

ANDERSON, CLAYTON & CO. FOR WILLIAM L. CLAYTON, BENJAMIN CLAYTON, AND MONROE D. ANDERSON, SURVIVING PARTNERS, HOUSTON, TEX.

Overassessment, 1918-----	\$107,955.52
Withheld deficiency-----	46,044.48

The certificate of overassessment was issued pursuant to directions contained in letters from the Department of Justice dated April 29 and July 26, 1935. Under those directions payment of the sum above stated was made in full settlement of all issues involved in the cases of *Anderson, Clayton & Co. v. Bass* (Law No. 1230) and *William L. Clayton et al. v. Bass* (Law No. 1233), now pending in the United States District Court for the Western District of Texas, and dismissal of said suits with prejudice is to be entered.

These cases presented no question as to the merits of the computation of plaintiffs' correct tax liability for the years in suit. The refund claims upon which the suits were predicated and the petitions first filed relate only to claims that the amounts in controversy were neither timely assessed or collected.

BAKER, EMERIT E., ESTATE OF, KEWANEE, ILL.

Overassessment, 1929-----	\$95,716.10
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The principal cause of overassessment in the amount of \$93,891.68 is due to the reduction of the profit reported from the sale of shares of the capital stock of a domestic corporation. Contrary to the provisions of section 113 (a), Revenue Act of 1928, and article 596, regulations 74, the taxpayer used the cost of the property to the decedent, who died January 1, 1929, as the basis for the computation of the profit instead of the fair market value of the property at the

time of the decedent's death, as set forth in the foregoing provisions of the law and regulations. In the present audit the fair market value of the property as of January 1, 1929, is used and the profit has been recomputed by apportioning the basis of the property between the rights and the stock in proportion to the respective values there at the time the rights were issued, according to the method prescribed in article 58, regulations 74.

The balance of the overassessment amounting to \$1,824.42 is caused by the allowance of additional deductions for interest, taxes, and a loss sustained upon the sale of certain assets.

BREYMANN, EUGENE, ESTATE OF, NEW YORK, N. Y.

Overassessment, 1932. \$139,338.87

Of the above overassessment, \$111,141.04 is due to the redetermination of the business income of contract dredging on a cash receipts and disbursements basis rather than on the so-called completed contract basis reported in the return. The method employed to compute the income reported in the return filed did not clearly reflect the taxable income. The revised computation is made in accordance with the method of accounting regularly employed by the taxpayer in keeping his books of account and records and is consistent with the method approved by the United States Board of Tax Appeals in the determination of deficiencies in tax in the instant case for prior years Docket No. 73438, sections 22 and 41, Revenue Act of 1932, and the regulations promulgated thereunder.

The balance of the overassessment amounting to \$28,197.83 is caused by the allowance of additional deductions for losses sustained, upon the sale of certain securities and on other securities which became worthless, during the taxable year. Sections 23 (e) and 113 (a), Revenue Act of 1932, and the regulations promulgated thereunder.

BROOKS, PETER C., TRUST NO. 1905, BOSTON, MASS.

Overassessments, 1928, 1929. \$96,779.35

The amount of \$82,947.65 of the overassessment for the year 1928 represents a portion of a deficiency in tax previously assessed against this taxpayer and is caused by the elimination from gross income of amounts included therein, in a prior audit, as dividends received on the stock of a domestic corporation. After investigation it was determined that such amounts do not constitute taxable income as provided in section 115 (e), Revenue Act of 1928, and the regulations promulgated thereunder.

The balance of the overassessment for the year 1928, amounting to \$10,892.27, represents a portion of the interest assessed on a previously asserted deficiency.

The overassessment for the year 1929 is determined pursuant to the final order of the United States Board of Tax Appeals entered in the instant case, docket No. 67683.

DALLAS RAILWAY & TERMINAL CO., DALLAS, TEX.

Overassessments, 1927 to 1931, inclusive. \$153,686.34

The taxpayer is a public-utility corporation operating under a franchise granted by the city of Dallas, Tex. Under the terms of

the franchise the taxpayer was compelled to set aside and create certain reserve funds to be used for certain specific purposes enumerated in the franchise. The taxpayer contended that under the terms of the franchise only a definite amount of the earnings could be earned, the excess being impounded constituted a property right belonging to the city of Dallas, which is an instrumentality of the State of Texas, and that to tax the corporation on these excess earnings would, in effect, not only tax it on income which did not belong to it, but would impair and burden a valuable property right belonging to the city of Dallas. The Bureau held that the so-called excess earnings of the taxpayer set aside for the creation and maintenance of the reserves should be included in the taxpayer's income. Because of the position taken by the taxpayer with respect to the nontaxability of the so-called excess earnings, it did not claim in its return for the years 1927 to 1931, inclusive, a deduction for depreciation on its depreciable assets. The allowance of additional deductions for depreciation as provided under the provisions of section 234 (a) (7), of the Revenue Act of 1926 and section 23 (k), of the Revenue Act of 1928 is responsible for \$105,713.72 of the above-stated overassessments.

The allowance of additional deductions for ordinary and necessary business expenses causes \$34,981.90 of the overassessments. It was found that such deductions were erroneously understated in the returns filed and were authorized by section 234 (a) (1) of the Revenue Act of 1926 and section 23 (a) of the Revenue Act of 1928.

The elimination of certain amounts included in the gross income reported in the returns filed causes \$6,884.07 of the overassessment for the year 1931 and the balance of the overassessment for the year 1929, amounting to \$278.20. Investigation discloses that such amounts do not constitute taxable income. Section 22 (a), Revenue Act of 1928; article 51, regulations 74.

The balance of the overassessments for the years 1927, 1928, 1930, and 1931, amounting to \$5,828.45, is caused by the allowance of additional deductions for amortization of certain leaseholds and losses sustained upon the abandonment of certain capital assets. Section 234 (a) (1) and (4), and section 204 (a), Revenue Act of 1926; section 23 (a) and (f), and section 113 (a), Revenue Act of 1928, and the regulations promulgated thereunder.

GANS STEAMSHIP LINE, NEW YORK, N.Y.

Overassessment, 1920----- \$125,000

The major issues producing the above overassessment consist of the allowance of special assessment, as provided under the provisions of sections 327 and 328 of the Revenue Act of 1918, and the amortization of charter parties. Claim for special assessment is predicated on the grounds of abnormality in income resulting from favorable contracts of charter parties and low officers' salaries paid during the taxable year. That portion of the overassessment resulting from amortization of charter parties may be explained as follows:

Prior to 1913 the taxpayer entered into a number of long-term charter parties, or contracts for the hire of vessels for a stated period. The taxpayer contended that these charter parties were entered into when the shipping business was dull; that they were for a much longer period of time than charter parties were usually entered into; that

on March 1, 1913, the charter party price per deadweight ton had increased substantially. It is on this valuation they claim amortization of charter parties for 1920.

The overassessment is determined pursuant to the final order of the United States Board of Tax Appeals entered in the case for the above year, Docket No. 35113.

GUGGENHEIM, DANIEL, ESTATE OF, NEW YORK, N. Y.

Overassessment, 1929..... \$87,393.23

This case was duly reported to the joint committee on December 21, 1935. The principal cause of the overassessment in the amount of \$78,080.29 results from the allowance of additional deductions for contributions made during the taxable year under section 23 (n) of the Revenue Act of 1928. The balance of the overassessment amounting to \$9,312.94 represents the remission of interest assessed on a previously asserted deficiency.

The staff of the committee offered no objections to the above-stated findings but contended that they were more than offset by a taxable gain accruing to the taxpayer in the same year from an exchange of stock. The case has therefore been withheld from settlement in order that this controversial question may be properly settled.

HARTFORD, HENRIETTA, MRS., TRUSTEE, GEORGE H. HARTFORD, SECOND TRUST, JERSEY CITY, N. J.

Overassessment, 1932..... \$90,142.51

The above-indicated overassessment is caused by the elimination of certain amounts included in the gross income reported in the return filed. After investigation and consideration in the Bureau, it was determined that such amounts constitute income of another taxpayer and were included in the taxable income which formed the basis for the assessment of a deficiency in tax against such other taxpayer. Sections 166 and 167, Revenue Act of 1932; article 881, regulations 77.

The overassessment was approved for allowance by the Commissioner on December 27, 1935, and duly transmitted to the Comptroller General of the United States, for preaudit and approval. The Comptroller General suspended the full amount pending receipt of record evidence showing that the allowance of the amount is not barred by the statute of limitation.

HUDSON MOTOR CAR CO., DETROIT, MICH.

Overassessments, 1927 and 1929..... \$120,985.39

The overassessments attributable to the above-mentioned years result principally from the allowance of obsolescence on dies, jigs, tools, etc., which had not been charged off on the books of the taxpayer. When the taxpayer commenced to manufacture the 1929 model car it entered into a contract with another company for the manufacture of several special-type bodies for its 1929 models. The cost of the dies, jigs, and tools was to be paid for by the Hudson Motor Car Co. on the basis of so much per body at the time of shipment. Since the demand for the models equipped with these special-type bodies fell way below the production schedule and the 1930

models were completely changed from the 1929 models, both in body and engine design, approximately 80 percent of the cost of dies, tools, and jigs purchased remained unamortized. The allowance of this adjustment is consistent with the final order of determination of the United States Board of Tax Appeals entered in the instant case for the prior years, Docket No. 61904.

KEYSTONE WATCH CASE CORPORATION, PHILADELPHIA, PA.

Overassessments, 1928, 1929..... \$191,902.36

The Keystone Watch Case Corporation was incorporated on May 4, 1927, under the laws of Pennsylvania, for the purpose of acquiring all of the assets and franchises, subject to liabilities, of the Keystone Watch Case Co. which was organized in 1899. Subsequently, under a plan and deposit agreement all of the assets and franchises subject to liabilities of the old company were transferred to the new corporation. The stockholders of the old company received all of the stock of the new corporation in exactly the same percentage as held in the old company. This transaction was consummated under what is known as a "short form" of merger pursuant to the laws of Pennsylvania (sec. 5694 Pa. Stat. 1920).

The Bureau held this to be a reorganization, upon which no gain or loss on such assets would be recognized. Originally the companies filed one return for the calendar year 1927. The Bureau also held that two returns were required, one for the old company and one for the new company. Therefore, the old company was required to file a return for the first 7 months of 1927 and the new company for the balance of the year. When the single return was filed for both companies for 1927, a net loss resulted which was carried forward in 1928 and 1929. A considerable part of this loss resulted from a decline in the inventory value. Since the old company and new corporation were considered as two separate entities, in examining the consolidated returns filed for the years 1928 and 1929 no part of the reported loss of the old company for the 7 months ended July 31, 1927, was allowed to be carried forward to 1928 and 1929. Deficiencies were assessed and paid for these years. Subsequent to payment of the tax claims for refund were duly filed for the entire amount of tax paid for these years.

In determining that two returns should be filed the question arose as to whether the new company should compute its inventory loss for 1927 by subtracting its closing inventory of December 31, 1927, from the inventory of the old company on January 1, 1927, or from the inventory of the old company in July 1927, when the assets were transferred to the new company. It was ultimately held that the former procedure was correct. The amount of \$155,366.86 of the above-stated overassessments results from this inventory adjustment.

Of the overassessments, \$9,530.62 is due to the elimination of a portion of the gross income as determined in a prior audit. After investigation it was determined such income was overstated. Section 22 (a), Revenue Act of 1928; article 51, regulations 74.

The allowance of additional deductions for depreciation causes \$7,448.70 of the overassessments. It was determined that the deductions allowed for depreciation in a prior audit were inadequate and less than the reasonable allowances authorized by section 23 (k), Revenue Act of 1928, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$19,556.18 represents a portion of the interest assessed on previously asserted deficiencies.

LACKAWANNA STEEL CO. AND SUBSIDIARIES, LACKAWANNA, N. Y.

Overassessment, 1918..... \$501, 189. 53

This case came before the joint committee on a proposed stipulation of a deficiency for the year 1918, pending before the United States Board of Tax Appeals. The cause of the overassessment is the allowance of amortization.

The above-named taxpayer was engaged in the recovery of basic natural resources, including coal, iron ore, limestone, and calcite, and the conversion of those materials by manufacturing process into steel and products derived from coal distillation through the use of byproduct-coking facilities.

During the war against Germany the Lackawanna Steel Co. and two of its subsidiary companies acquired and installed equipment and facilities for the purpose of increasing or expediting the production of articles necessary to the prosecution of the war. The taxpayer was successful with its operations, particularly during the war, and in October 1922 it sold out to the Bethlehem Steel Co., this company acquiring the assets of the parent and the capital stocks of the subsidiaries. The amount of amortization has been determined as the result of the sale of all of the assets on the basis of the balance sheet as of September 30, 1922. The consideration received for the net worth of the company was stock in the Bethlehem Steel Corporation which in the computation of the sale price has been figured at the market price of Bethlehem common stock as evidenced by quotations of sales on the date of the transaction.

METROPOLITAN LIFE INSURANCE CO., NEW YORK, N. Y.

Overassessments, 1924-26, inclusive..... \$1, 031, 040. 72
 Withheld—deficiency..... 909, 597. 43

The overassessments are determined pursuant to the final order of the United States Board of Tax Appeals entered in the instant case for the above years, docket No. 32701.

Of the overpayments above indicated, approximately \$1,900,000 is due to a redetermination of tax-exempt interest and the elimination of the reductions, against the allowable deductions representing 4 percent of the mean of the reserve funds required by law. At the time the returns were filed, section 245 (a) (2) of the Revenue Acts of 1924 and 1926 required the deduction for 4 percent of the mean of the reserve fund to be reduced by the amount of exempt interest allowed as a deduction by section 245 (a) (1). In view of this provision of the law, there was nothing to be gained by computing and setting up accurately the exempt interest in the returns. The Supreme Court of the United States subsequently held, in the case of the *National Life Insurance Company v. United States* (275 U. S. 508) that the provision was unconstitutional. The taxpayer, therefore, is entitled to the deductions for tax-exempt interest not set up in the returns; in addition, it is entitled to the allowance of the amount by which the deduction for 4 percent of the mean of reserve funds was reduced in determining the reported income.

The allowance of deductions each year for depreciation on furniture and fixtures used in the investment department accounts for approximately \$12,500 of the overassessments. *Rockford Life Insurance Company v. Commissioner* (292 U. S. 382).

The balance of the overpayments, about \$28,000, is due to miscellaneous adjustments which have been conceded, without prejudice to future years, rather than to permit a further accumulation of interest by the delay incident to litigation.

PEAVY-BYRNES LUMBER CO., SHREVEPORT, LA.

Overassessment, 1919.....	\$136, 913. 73
Withheld—appeal.....	65, 374. 16

The overassessment to the extent of \$177,547.73 results from the elimination of the income of certain subsidiary corporations included in the consolidated return. It was determined that such corporations were not members of the affiliated group within the meaning of section 240 of the Revenue Act of 1918, and the tax liabilities of the several corporations have been determined upon a separate basis. *Commissioner v. Peavy-Byrnes Lumber Company et al.* (52 Sup. Ct. 494).

An allowance of depletion adjustments to properly reflect the valuation of timber properties acquired July 28, 1913, results in \$21,416.68 of the overassessment. This allowance is predicated on the decision rendered by the United States Circuit Court of Appeals for the Fifth Circuit in the instant case for other years. *Peavy-Byrnes Lumber Company v. Commissioner* (69 Fed. (2d) 712).

The balance of the overassessment in the amount of \$3,323.48 results from the revision of the reported valuation of the closing inventory. It was determined that the closing inventory reported in the return was overvalued, producing an overstatement of the taxable net income. The revised inventory used in the present audit corresponds with the opening inventory used in the determination of taxable net income for the succeeding year. Section 203, Revenue Act of 1918, and the regulations promulgated thereunder.

PITTSBURGH & LAKE ERIE RAILROAD CO., NEW YORK, N. Y.

Overassessments, 1918, 1919.....	\$549, 195. 61
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The principal cause of the overassessments in the amount of \$454,441.08 results from the adjustment of invested capital to reflect the restoration of the value of certain assets, erroneously charged off of the books in prior years which properly constitute a part of the surplus and undivided profits at the beginning of each year. The amount allowed represents the original cost of new construction of roadway and structures charged to expense and never capitalized. Section 326, Revenue Act of 1918, and the regulations promulgated thereunder.

Another contributing cause of the overassessments in the amount of \$47,958.16 is due to the elimination of a portion of the amounts reported in returns as interest income. The Bureau determined that such income was erroneously overstated. Sections 213 (a) and 233 (a), Revenue Act of 1918; articles 31 and 541, regulations 45. The adjustments are consistent with the decision of the United States Board of Tax Appeals in the instant case for subsequent years.

Pittsburgh and Lake Erie Railroad Company v. Commissioner (28 B. T. A. 259).

The amount of \$46,106.88 of the overassessments is caused by the elimination from gross income as determined in a prior audit of amounts representing the 2 percent tax assumed by the Director General of Railroads as provided by the Federal Control Act of March 21, 1918. Investigation discloses that such amounts do not constitute taxable income. *Appeal of New York, Ontario & Western Railway Company* (1 B. T. A. 1172).

The balance of the overassessments amounting to \$689.49 represents amortized discount and expense sustained during the taxable year 1918 in excess of the amount deducted in the return or allowed in the previous audit and is allowed as a deduction from gross income in accordance with section 234 (a) (2), Revenue Act of 1918; articles 544 and 563, regulations 45.

ROBERTS, HENRY, ESTATE OF, HARTFORD, CONN.

Overassessment, 1929----- \$154,890.16

An overassessment of estate tax and interest in favor of the above-named taxpayer was determined in the amount of \$154,890.16. The sole issue in this case was whether the transfers made by the decedent to his wife and two sons were made in contemplation of death within the meaning of section 302 (c) of the Revenue Act of 1926. An examination of the records disclose that the transfers could not in any view of the situation have been considered as intended to take effect in possession or enjoyment at or after death.

The certificate of overassessment was issued pursuant to directions contained in a letter from the Department of Justice dated June 12, 1935. Under those directions payment of the sum mentioned herein was made in full settlement of all issues involved in the case of *The Hartford-Connecticut Trust Company, Administrator, Estate of Henry Roberts v. Eaton, Collector*, pending in the United States District Court for the District of Connecticut, and dismissal of said suit with prejudice is to be entered.

SOUTH PENN OIL CO., PITTSBURGH, PA.

Overassessment, 1929----- \$75,829.62

The certificate of overassessment in this case was issued pursuant to directions contained in a letter from the Department of Justice dated July 29, 1935. Under those directions payment of the sum mentioned herein was proposed in full settlement of all issues involved in the case of *South Penn Oil Company v. United States*, pending in the United States District Court for the Western District of Pennsylvania, and dismissal of said suit with prejudice is to be entered.

The record discloses that the suit was predicated on a claim that the taxpayer is entitled to additional depreciation and depletion; also that the taxpayer did not take as a deduction from income certain losses which were properly allowable.

Settlement in this case has been deferred by the Bureau pending a supplemental report on valuations

STANDARD OIL CO. OF CALIFORNIA, SAN FRANCISCO, CALIF.

Overassessments, 1916 to 1919, inclusive..... \$7, 848, 318. 80

The above-named case was reported to the Joint Committee on Internal Revenue Taxation on February 19, 1935. Due to the amount involved and the complex questions the cases presented, it was deemed advisable to bring the case before the joint committee sitting in executive session. Accordingly, on March 22, 1935, the major issues involved in the case were explained to the committee by representatives of the Treasury Department, and the committee voted not to interfere with the action of the Bureau. The major issues involved and basis of settlement may be summarized as follows:

The principal cause of the overassessments in the amount of \$4,204,835.59 results from the allowance of additional deductions for depreciation and depletion. An examination of the case discloses that during the years 1918 to 1922, the taxpayer expended certain amounts for wages, fuel, repairs, hauling, and other incidental expenses incurred in connection with the drilling of oil and gas wells. These expenditures did not include any costs for physical structures such as derricks, drilling tools, casing, pipe lines, tanks, engines, pumps, and other physical assets.

In conformity with the policy adopted in years prior to 1918, the taxpayer on its books for the years 1918 to 1922, inclusive, continued to charge its incidental drilling expenditures or development costs to capital, and filed its original returns for these years on that basis. The record discloses that at the time the taxpayer filed its original return for the year 1918, it was practically impossible for the company to make a satisfactory determination of its depletion and depreciation deductions for that year, or to make an intelligent election between the alternative methods of expensing or capitalizing incidental drilling costs which election was permitted by article 223 of regulations 45. For 1917 the taxpayer depleted drilling costs by the reduction in settled flow and production method authorized in section 12 (a) of the Second Revenue Act of 1916. The Revenue Act of 1918 (enacted February 24, 1919) merely authorized the deduction of a "reasonable allowance" for depletion and the method of "reduction in flow" prescribed in the 1916 act was eliminated. On April 17, 1919, regulations 45 were issued, article 214 of which provided that allowances for depletion of oil and gas wells should be determined by the unit method. This method was a complete departure from the "reduction in flow" method previously practiced by the taxpayer and required the compilation of a vast amount of data necessary to determine basic values, estimated reserves, estimated rate of future production, etc.

In the determination of the taxpayer's tax liability for the years 1916 to 1922, inclusive, the Bureau capitalized all development expenditures and allowed deductions from income for depletion and depreciation of such development costs. The capitalized expenditures which are recoverable through deductions from income on account of depletion and depreciation consist of two major classes: (a) Expenditures for rights, title, or interests in oil and gas deposits which are recoverable through depletion; and (b) expenditures for development of the oil and gas deposits which are recoverable through depletion and depreciation.

Another major cause of the above overassessments is due to the allowance of an additional deduction for amortization of the costs of facilities installed or acquired after April 6, 1917. The amount of \$1,167,239.26 may be ascribed to this classification. This deduction was in respect to four tank steamers used by the taxpayer for transportation of petroleum products contributing to the prosecution of war. These vessels were contracted for prior to April 6, 1917, and on that date were partially completed. Three of the vessels were put in service late in 1917 and the remaining one early in 1918. All four were sold at a loss during 1919 and 1920. The expenditures have been carefully analyzed and varified by 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.

The revision of the reported valuations of the opening and closing inventories causes \$1,300,468.96 of the overassessments for the years 1918 and 1919. It was determined that the reported inventory valuations were understated and the understatement of the opening inventories exceeded that of the closing inventories, producing overstatements of taxable income. The revised opening and closing inventories used in the present audit are the same as those used in the determination of taxable income for the preceding and succeeding taxable years, respectively. Section 206, Revenue Act of 1918, and the regulations promulgated thereunder.

The amount of \$400,606.95 of the overassessments for the years 1918 and 1919 results from increases in the war and excess-profits credit. It appears after examination of the report submitted that the reported average invested capital for the pre-war years was overstated and that the reported invested capital for the taxable years and the average income for the pre-war years were understated, resulting in an understatement of the war and excess-profits credits. Sections 310, 311, 312, and 326, Revenue Act of 1918, and the regulations promulgated thereunder.

The allowance of additional deductions for taxes causes \$376,595.83 of the overassessments. During the years 1916 to 1922, inclusive, the taxpayer paid State, county, and municipal taxes to the States of California, Arizona, Nevada, Oregon, and Washington and the Territories of Alaska and Hawaii. For Alaska, Arizona, Hawaii, and Nevada the taxes were paid in the year in which they were assessed and became due and payable. The taxes for California, Washington, and Oregon, however, were paid in part, in the year subsequent to the year in which assessed, this being due to the fact that a portion of such taxes did not become due and payable until the year following that in which assessed.

The taxpayer contended that the State, county, and municipal taxes for California, Washington, and Oregon are proper accruals in the year for which they are assessed, irrespective of the fact that portions thereof do not become due and payable until a subsequent year. This contention was sustained and the deductions were allowed under the provisions of section 12 (a) (4) Revenue Act of 1916, and section 234 (a) (3) Revenue Act of 1918 and the regulations promulgated thereunder.

The amount of \$177,373.76 of the overassessment for the year 1919 is caused by the elimination of certain amounts included in the gross

income reported in the return filed. Investigation discloses that such amounts constitute income for other years and were included in the determination of the taxable income for such other years. Section 233, Revenue Act of 1918, and the regulations promulgated thereunder.

The allowance of additional deductions for ordinary and necessary business expenses causes \$135,609.97 of the overassessments for the years 1917, 1918, and 1919. It was determined that such expenses constitute proper deductions for the above years and were allowable under section 12 (a) first, Revenue Act of 1916, and section 234 (a) (1), Revenue Act of 1918, and the regulations promulgated thereunder.

The balance of the overassessments amounting to \$85,588.48 for the year 1919 is caused by the allowance of an additional deduction for a loss sustained upon the sale of certain capital assets. By a contract the taxpayer agreed to convey to another company all its right, title, and interest in certain properties for a definite consideration. The properties were unpatented lands coming within the scope of the Taft withdrawal order of 1909 and the Leasing Act of 1920. Thus at the date of the contract the taxpayer did not have an undisputed title to or undisputed leasehold interest in the properties. Under the terms of the contract the sale was rendered contingent upon the granting of leases upon the properties by the United States Government.

The Bureau in a deficiency notice treated the sale of the properties in question as a completed sale and held that the expectancy of future payments on purchase price did not have a readily realizable market value, thereby suspending all profit from the sale. The Bureau further held that no income should be returned until such time as the deferred payments received equaled the unextinguished March 1, 1913, values at the date of sale.

In the settlement of this case, the amount of \$5,637,982.57 of the overassessments will be applied against the unpaid original tax liability for the year 1920, and the balance of the overassessments amounting to \$2,210,336.23 will be credited against deficiencies in tax for the above year and other taxable years, which were pending before the United States Board of Tax Appeals or in the Bureau and were considered simultaneously with the taxable years covered by the overassessments.

STANDARD OIL COMPANY OF NEW YORK AND SUBSIDIARIES, NEW YORK,
N. Y.

Overassessments, 1922 to 1925, inclusive..... \$1,271,696.61

This case was referred to the joint committee on December 13, 1935, and payment was delayed in order that an opportunity could be afforded the members of the committee to meet and consider the issues involved. On February 5, 1936, a meeting was held and after an explanation of the proposed settlement was made the committee interposed no objections and the Bureau was advised to proceed with the settlement.

The overassessments result from the allowance of additional credits representing foreign taxes accrued during the taxable years and paid subsequent to the filing of the Federal income-tax returns. It appears that the increases in the foreign tax credits are due primarily to delays in ascertaining the true amounts of the taxes from such distant coun-

tries as India and China, where the taxpayer derived large incomes. It was determined that such credits were properly allowable under the provisions of section 238, Revenue Acts of 1921, 1924, and 1926, and the regulations promulgated thereunder (G. C. M. 12882; C. B. XIII-1, 89; *Burnet v. Chicago Portrait Co.* (285 U. S. 1)).

Attention is called to the fact that in the settlement of the tax liability for the years 1920, 1926, and 1928 deficiencies aggregating \$1,212,076.75 have been agreed to by the taxpayers, and since the overassessments above indicated amount to \$1,271,696.61, there is a net overassessment of only \$59,619.86.

This case has been withheld by the Bureau pending settlement of deficiencies for 1920, 1923, 1926, 1927, and 1928, which have been appealed to the United States Board of Tax Appeals.

THE UNITED STATES BRANCH OF THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., BOSTON, MASS.

Overassessments (2 cases):

1926, 1927.....	\$189,808.98
1929-31, inclusive.....	100,993.50

The overassessments for the years 1927 and 1928 were reported to the joint committee on July 3, 1935, and the overassessments involving the years 1929 to 1931, inclusive, were submitted on December 31, 1935. Inasmuch as the issues causing the overassessments are the same in both cases, the following résumé covers the combined allowances made to this taxpayer.

The taxpayer is the domestic branch of a foreign insurance company organized under the laws of Great Britain. In its Federal income-tax returns for the years above indicated it failed to take certain proper deductions from gross income on account of expenses, losses, and other items to which it was entitled by law and regulations, one of the principal items being head office expenses of the company allocable to income from United States sources from departments transacting business in the United States. The allowance for deductions for home or head office expenses allocable to United States gross income has been computed in accordance with section 204 (d), 232, and 119 of the Revenue Act of 1928, and articles 1111 and 680 of regulations 74.

Payment of the sums mentioned herein for the years 1926 and 1927 was made in full settlement of all issues involved in the case of *The United States Branch of the Employers' Liability Assurance Corporation, Limited, v. United States*, pending in the United States District Court for the District of Massachusetts, and dismissal of said suit with prejudice is to be entered. The adjustments for the other years above stated are similar to the adjustment authorized by the Department of Justice in closing out pending suits for taxes overpaid for the taxable years 1926 and 1927.

WHITTEMORE, HARRIS, ESTATE OF, WATERBURY, CONN.

Overassessment, 1927.....	\$91,142.19
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This is a stipulation case made by the Attorney General by virtue of the authority vested in him by Executive Order 6166 and represents a proposed settlement of a suit filed in the Federal District Court for Connecticut. Four issues are involved in the suit. The first of these involves the question of the market value of certain stocks and interest in a certain trust fund; the second involves the question of

whether or not an amount representing fair market value of the property transferred to certain persons subsequent to the enactment of the Revenue Act of 1926 was in fact made in contemplation of death; the third issue involves the disallowance of debts, pledges, and subscriptions made by the decedent in his lifetime; and the fourth involves the disallowance of a bequest to a cemetery as a bequest to a charitable and public institution. The compromise figure, based upon the recommendations of the valuation engineers of the Bureau of Internal Revenue is believed to be a very fair settlement from the point of view of the Government and represented the minimum amount which the plaintiff might be regarded as certain to recover. Payment of the sum mentioned herein was made in full settlement of all issues involved in the case of the *Colonial Trust Company, Executor v. Eaton, Collector*, pending in the United States District Court for the District of Connecticut, and dismissal of said suit with prejudice is to be entered.

SUPPLEMENT TO PART II

TREASURY DEPARTMENT,
Washington, January 21, 1937.

Mr. L. H. PARKER,
Chief of Staff, Joint Committee on Internal Revenue Taxation,
Washington, D. C.

DEAR MR. PARKER: I am submitting herewith an analysis of the overassessments in excess of \$20,000 reviewed in this office for the year 1935. 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,

MORRISON SHAFROTH,
Chief Counsel,
Bureau of Internal Revenue.

INCOME-TAX CASES

REPORT FOR YEAR ENDED DECEMBER 31, 1935

The number of income-tax cases involving overassessments and made the subject of the present analysis is 244. From an examination of these cases it is found that the original taxes assessed amounted to \$115,778,736.23, additional taxes and interest assessed amounted to \$27,438,977.90, the overassessments previously allowed amounted to \$5,213,389.53, and the total overassessments herein analyzed amounted to \$36,558,967.04. The overassessments made the subject of this analysis involving the profits-tax years, 1917 to 1921, inclusive, aggregate \$9,857,891.20 of which \$737,345.93 represents refund, \$8,495,276.76 represents credits to other years, and \$625,278.51 represents unpaid taxes abated. The sum of \$9,857,891.20 is 26.96 percent of the overassessments covered by this analysis, which is a small increase from that shown in the report for the year 1934, which disclosed 24.11 percent. The percentage of overassessments due to court decisions increased from 10.34 percent, shown in the analysis of overassessments for the year 1934, to 12.45 percent. The percentage of overassessments due to Board of Tax Appeals decisions decreased from 7.61 percent in 1934 to 6.60 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

Classification	Refund	Credit	Abatement	Total	Percent
Court decisions.....	\$2,052,406.13	\$1,896,409.94	\$601,916.51	\$4,550,762.58	12.45
Board of Tax Appeals decisions.....	723,456.86	828,972.38	861,373.91	2,413,803.15	6.60
Department of Justice settlements.....	713,105.89	87,247.29		800,353.18	2.19
Duplicate and erroneous assessments.....	3,076.49	11,338.65	10,681,817.43	10,696,232.57	29.26
Depreciation.....	368,984.18	1,153,410.10	804,400.59	2,326,794.87	6.36
Depletion.....	15,911.42	3,211,671.55	7,525.27	3,238,108.24	8.86
Amortization.....	39,130.98	1,186,182.54	242,178.42	1,467,491.94	4.01
Inventory changes.....	260,998.89	1,318,011.79	1,167.78	1,580,178.46	4.32
Affiliation changes.....	57,783.31	57,378.79	62,388.63	177,547.73	.49
Shift of income.....	140,918.31	871,362.29	471,206.99	1,483,487.59	4.06
Invested capital changes.....	17,262.20	430,114.27		447,376.47	1.22
Losses and bad debts.....	103,880.20	228,121.80	351,884.36	683,886.36	1.87
Foreign taxes.....	3,813.90	200,755.35	21,321.62	225,890.87	.62
Adjustment of gross income.....	169,575.86	122,249.12	1,713,858.33	2,005,683.31	5.49
Nontaxable dividends.....	310,026.95	93,274.98	80,207.45	483,509.38	1.32
Interest on deficiencies.....	237,997.85	35,583.94	1,196,810.98	1,470,392.77	4.02
Taxes.....	30,790.65	446,557.28	1,155.95	478,503.88	1.31
Proceeds from sales of stocks.....	124,620.81	34,477.85	259,062.21	418,160.87	1.14
Net losses.....	32,262.10	12,199.73	60,547.87	105,009.70	.30
Penalties.....	6,672.25	22,522.51	301,539.25	330,734.01	.90
Miscellaneous.....	297,886.05	403,102.17	474,070.89	1,175,059.11	3.21
Total.....	5,710,561.28	12,653,944.32	18,194,461.44	36,558,967.04	100.00

¹ 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, 1935

The cases which are covered by this analysis numbered 62 for the year 1935. The total original taxes assessed amounted to \$11,407,452.12. The total additional taxes assessed amounted to \$4,053,443.66. The total overassessments for the year 1935 amounted to \$10,495,213.11, of which \$1,309,463.64 were refunded and \$9,185,749.47 were abated.

It will be noted that 75.23 percent of the overassessments was due to credits allowed for payment of State inheritance taxes after the Federal estate-tax returns were filed and the determination of Federal estate-tax liabilities were assessed, the overassessments having been allowed in accordance with section 301 (b) of the Revenue Act of 1926, as amended by section 802 of the Revenue Act of 1932.

Analysis of estate-tax overassessments

Classification	Refund	Abatement	Total	Percent
Credit for State inheritance taxes.....	\$445,375.18	\$7,450,541.51	\$7,895,916.69	75.23
Board of Tax Appeals decisions.....	22,132.68	314,739.83	336,872.51	3.22
Interest adjustments.....	13,061.84	184,871.49	197,933.33	1.88
Duplicate assessments.....	422.98	483,996.89	484,419.87	4.61
Attorneys' fees, executors' commissions, miscellaneous administration expenses, and claims against the estate.....	48,460.44	106,732.60	155,193.04	1.48
Miscellaneous.....	122,739.16	204,047.86	326,787.02	3.11
Court decisions.....	306,739.01	440,819.29	747,558.30	7.13
Department of Justice settlements.....	350,532.35		350,532.35	3.34
Total.....	1,309,463.64	9,185,749.47	10,495,213.11	100.00

PART III

GENERAL SURVEY OF OVERASSESSMENTS

Joint committee reports of refunds and credits.—The first report submitted to Congress under section 710 of the Revenue Act of 1928 (H. Doc. 43, 71st Cong., 1st sess.) covered the 7-month period from May 29 to December 31, 1928. There was included in this report, however, an analysis of the refunds made during the 14-month period, February 28, 1927, to April 24, 1928, and reported to the committee pursuant to the First Deficiency Act, 1927. The second report and all subsequent reports on refunds and credits in excess of \$75,000 were made by the joint committee to Congress on a calendar-year basis.

Disposition of cases reported.—During the calendar year 1935, 22 overassessment cases were reported to the joint committee. Settlement, however, was made in only 18 of these cases, since 2 cases were withheld as a result of certain contentions emanating from the staff of the committee; 1 case was suspended by the Comptroller General pending receipt of record evidence showing that the allowance is not barred by the statute of limitations; and 1 case was withheld in connection with proposed deficiencies for other years.

Overassessment allowances and interest paid during 1935.—The total net overassessments referred to the committee during the calendar year 1935, which were subsequently paid, credited, or abated, amounted to \$11,335,276.38. On these overassessments the sum of \$3,281,235.09 was allowed in interest, making the total of overassessments and interest on the cases reported for this period \$14,616,511.47. In order to obtain the grand total of all overassessments and interest allowed during 1935, it is necessary to add to the total reported overassessments and interest \$3,356,243.40 on cases previously reported in other years and withheld which were allowed during the year 1935. The grand total of overassessments and interest as shown in the preceding statistical summary (pt. II) amounts to \$17,972,754.87.

Comparison of 1935 overassessment allowances with previous years.—The total overassessments shown above include any abatements which occur in cases where the refund or credit is in excess of \$75,000. Since the abatements constitute erroneous assessments, offset by adjusting bookkeeping entries, they have no effect whatever on the revenue. The following comparison is therefore confined only to adjustments represented by refunds and credits.

	Refunds	Credits	Total
21-month period ended Dec. 31, 1928.....	\$109,035,234	\$36,824,797	\$145,860,031
Calendar year—			
1929.....	38,203,522	15,969,125	54,172,647
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

The above summary clearly indicates the relative increase and decrease in overassessment allowances for the various years. It appears that there has been a steady decrease in the allowances made to taxpayers as a result of overassessments and overpayments of income and

estate taxes in all the years with the exception of 1930 and 1935. In 1930, as previously reported, the allowances were disproportionately large due to the settlement of the *United States Steel Corporation case*. The increase in the total amount of overassessments for 1935 may be ascribed to a credit of \$7,848,318.80 allowed to the Standard Oil Co. of California for the taxable years 1916 to 1919, inclusive. This credit resulted from allowances involving depreciation, depletion, amortization of costs of war facilities, inventory adjustments, war, and excess-profits credit, taxes paid to States, allocation of income, ordinary and necessary business expenses and losses sustained upon the sale of capital assets. It should be stated, however, that \$5,637,982.57 of this amount will be applied against the unpaid original tax liability for the year 1920, and the balance of \$2,210,336.23 will be credited against deficiencies in tax for other taxable years, which were pending before the United States Board of Tax Appeals or in the Bureau and considered simultaneously with the taxable years covered by the overassessments.

By further reference to the above table, it will be observed that there has been a decrease in the cash refunds allowed on cases reported to the committee during the calendar year 1935. The amount of cash, exclusive of interest, returned to taxpayers on refund claims amounts to \$2,314,495 in 1935, in comparison with \$4,759,407 in 1934, a decrease of approximately 51 percent. The marked decrease in cash refunds is clearly emphasized when reference is made to allowances since 1927. Cash refunds for 1935 are about 96 percent less than those allowed for the 14-month period, February 28, 1927, to April 24, 1928, and for the 7-month period from June 1 to December 31, 1928. The diminution in current cash allowances as compared to the calendar years 1929, 1930, 1931, 1932, and 1933 is 94 percent, 92 percent, 85 percent, 81 percent, and 68 percent, respectively.

It is also of interest to note in connection with this year's over-assessment cases that approximately 80 percent of the tax originally and additionally assessed was ultimately collected.

Interest paid on refunds and credits.—The interest cost on the 18 cases duly reported to the committee in 1935 and allowed totaled \$3,281,235.09. Of this amount \$2,177,558.21 was credited, or offset, against taxes due in other years and the balance of \$1,103,676.88 represented cash actually returned to the various taxpayers. The average percentage of interest allowed on these overassessments was approximately 29 percent. The corresponding interest allowance for adjustments made in 1934 was about 33 percent.

Overassessments attributable to excess-profits tax years.—Analysis of all overassessments reported to the committee during the period covered by this report shows that allowances of \$8,860,697.52, or 78 percent, were made on account of taxes for the excess-profits tax years up to and including 1921, and the remaining 22 percent of the allowances were for years subsequent to 1921. Further analysis discloses that the interest paid on overassessments prior to 1922 totaled \$2,375,178.01; that is, the interest charges attributable to the excess-profits tax years represent 72 percent of the interest paid on all overassessments submitted to the committee during the calendar year 1935. Adjustments relating to excess-profits tax years comprised about 88 percent of all overassessments allowed in 1927 and gradually decreased to 35 percent in 1934. The increase in

amount involving the excess-profits-tax years allowed in 1935 is traceable to the settlement of the *Standard Oil Co. of California case* referred to above.

Specific causes of overassessment.—A complete classification of the overassessment allowances appears on page 13. 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 1935. It is believed important to discuss these causes in some detail.

It will be observed that the most important single cause of the 1935 refunds is due to the determination of depreciation allowances. The amount of \$4,317,998 or approximately 38 percent of all the overassessments is attributable thereto. The statutory provision for depreciation; that is, for the exhaustion, wear, and tear of property used in a trade or business has not been changed. The administrative procedure, however, was considerably changed by the promulgation of Treasury Decision 4422 (February 28, 1934), which effected an amendment to the regulations. The restrictions contained therein require that the taxpayer prove that the deductions are reasonable or run the danger of having them disallowed. Also, there is a limitation on the deduction to such amounts as may be considered necessary to recover the unrecovered cost or basis of the depreciable asset during the remaining useful life of property. The regulations before the amendment provided for a new estimate of the useful life of depreciable property when the original estimate was found to be incorrect, but the present regulations in effect require a reexamination of the estimate each year. A taxpayer is not permitted under the law to take advantage in later years of his prior failure to take any depreciation allowance or of his action in taking an allowance plainly inadequate under the known facts in prior years. It is believed that the present policy will have a decided effect in materially increasing the revenue by reducing claims for unreasonable allowances for depreciation in the future.

The second major cause of this year's overassessments results from inventory adjustments. Approximately 13 percent of all overassessments were due to the revised evaluations of merchandise stocks, made necessary because of the difficulty of ascertaining market prices which prevailed on specific dates. The reported inventory valuations were understated and the understatement of the opening inventories exceeded that of the closing inventories, producing overstatements of taxable income.

Adjustments necessitated by inventory revisions are perhaps the most outstanding examples of the failure of taxpayers to follow provisions specifically set forth in Bureau regulations. Some methods used which are not approved include deductions of reserves for price changes; deduction of an estimated depreciation in value of inventories; the valuation of part of inventory on a cost basis and another part at cost or market whichever was lower basis, although the value of both parts of the inventory may have been greater or less than cost; the valuation of inventories at nominal prices or at a constant price; and the inclusion in inventories of stock in transit, title to which was not in the taxpayer.

Third in importance is the allowances of increased deductions for amortization of war facilities which account for 11.42 percent of the

total overassessments reported. The Revenue Acts of 1918 and 1921 (sec. 234 (a) (8)) contemplated difficulties in respect to this class of allowance and provided that a taxpayer could request or the Commissioner on his own initiative could reexamine the returns and other data and make a redetermination of amortization up to March 3, 1924. The allowance for amortization is, generally speaking, based on the difference between cost and sale or salvage value or post-war replacement costs, or on a comparison of capacity with post-war value in use in order to determine the remaining usefulness of the asset. Obviously most of these comparisons could not be made until after returns were filed with the result that a revision of the amortization deduction taken on returns was in most instances necessary.

Overassessments aggregating \$1,193,864.91 were allowed in pursuance of the orders of the United States Board of Tax Appeals. The cases in which these allowances are involved are strictly settlement or compromise cases and generally result from deficiency assessments. The joint committee is given an opportunity to examine the cases before stipulations in connection therewith are acted upon by the Board.

Invested capital, section 326 of the Revenue Act of 1918, ineffective since 1921, ranks fifth as the chief cause of overassessments, representing \$855,048.03 or 7.46 percent. Allowances in two cases comprise the entire sum. The first case results from adjustments of invested capital to reflect the restoration of the value of certain assets, erroneously charged off of the books in prior years which properly constitute a part of the surplus and undivided profits at the beginning of each year. The amount allowed represents the original cost of new construction of roadway and structures charged to expense and never capitalized. The other results from increases in the war- and excess-profits credit. It was found that the reported average invested capital for the pre-war years was overstated and that the reported invested capital for the taxable years and the average income for the pre-war years were understated, resulting in an understatement of the war- and excess-profits credits.

Many of the overassessments in the past have been attributable to the determination of invested capital. The language and intent of the provisions of the act were quite clear, but the application required judgment as to whether the facts in a particular case were such as to bring the taxpayer within the meaning and intent of the statute.

Under the heading of "Taxes" shown in the classification is included allowances of additional deductions due to the understatement of taxes in the return filed. The taxpayer on its books, which were kept on the accrual basis, accrued State, county, and municipal taxes in the year in which they became due and payable, which year did not correspond with the year in which assessed. In its income and profits tax returns filed the taxpayer deducted the taxes accrued on its books which amounts represented the taxes actually paid in the respective years. It was determined that such deductions were properly allowable under the provisions of section 12 (a) (4), Revenue Act of 1916, and section 234 (a) (3), Revenue Act of 1918, and the regulations promulgated thereunder.

It also appears from the classification of the 1935 overassessments that \$246,032.35 was allowed as a result of estate-tax adjustments. The cases comprising these allowances are stipulation cases made by

the Attorney General by virtue of the authority vested in him by Executive Order 6166. The principal issues involve the question of whether transfers made by decedents were made in contemplation of death within the meaning of section 302 (c) of the Revenue Act of 1926. Obviously, the question is one of fact, the solution of which depends upon the weight that will be given the evidence submitted by the taxpayer on the one side and the Government on the other. An examination of the records in each instance discloses that the preponderance of evidence was with the taxpayer.

As a general rule, any classification covering such a wide scope necessitates a miscellaneous caption. The allowances included under this heading in this report are of such diversified character that they are not assignable to any of the groupings of major classes listed in the tabulation.

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

Conclusion.—In conclusion, it may be stated that the overassessments reported to the committee during the calendar year 1935, and paid after the 30-day period prescribed by law, represent accurate and careful determinations of final tax liability. Of the 22 cases duly reported, no adverse criticism could be made on the basis of the summary of facts and decision of the Commissioner in 17 cases. In two of these cases, however, due to the large amounts involved, it was deemed advisable to apprise the members of the joint committee of the Bureau's proposed settlement and views of the staff in connection therewith. The remaining five cases presented serious differences between the Treasury and the staff and necessitated certain comments or criticisms. The disposition of these five cases was as follows:

Three cases were allowed by the Bureau after conferences with the staff of the committee in which additional information was furnished clarifying the issues involved.

Two cases were withheld from settlement pending further review. One, in the amount of \$87,393.23, involves contributions made during the taxable year under section 23 (n) of the Revenue Act of 1928. The staff offered no objections to the findings in this particular case but contended that they were more than offset by a taxable gain accruing to the taxpayer in the same year from an exchange of stock. The other, totaling \$75,829.62, was questioned in connection with the deductibility of a loss resulting from a sale. The Bureau has ordered a supplemental report on valuations in the latter case in order that this controversial issue may be properly determined.

It is interesting to note that the income-tax collections for the calendar year 1935 amounted to \$1,234,974,841, whereas the income-tax cash refunds for that year amounted to \$22,013,319.99, or less than 2 percent of the income-tax collections.

Respectfully submitted.

WALTER L. TUCKER, *Attorney.*

Approved:

G. D. CHESTEEN,
Assistant Chief of Staff.